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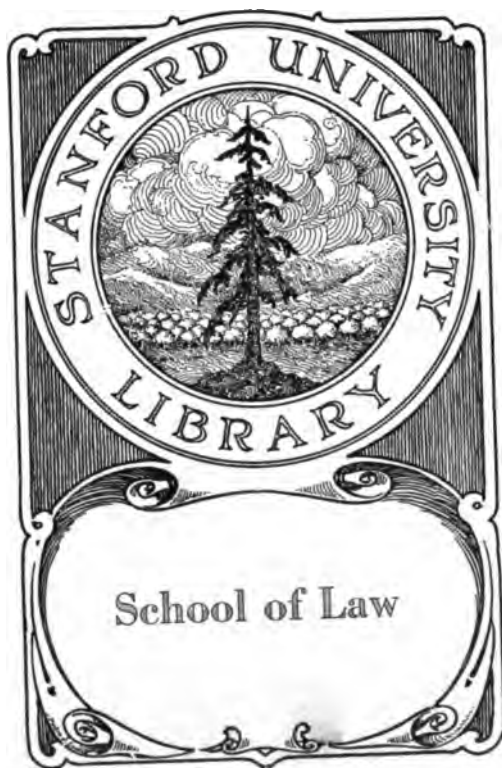
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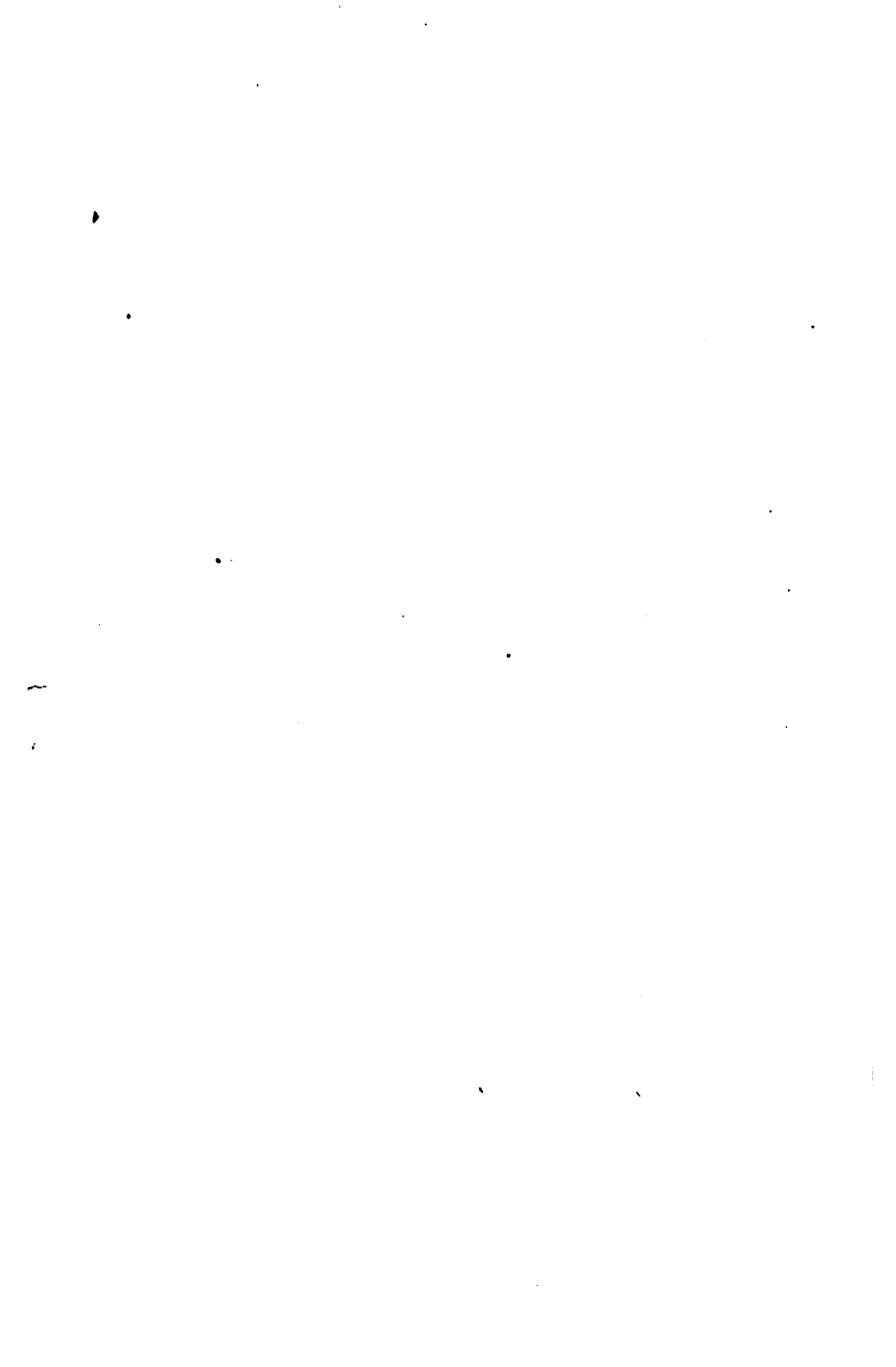
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VOL. 5

JUNE, 1898.

No. 1

CASE AND COMMENT

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William B. Gilbert.

In the ninth circuit of the Federal courts, which includes the states of California, Nevada, Oregon, Washington, Idaho, and Montana, the senior in commission as circuit judge is William B. Gilbert of Portland, Or. He was appointed to that position by President Harrison, on March 18, 1892. At that time Judge William W. Morrow was district judge, and his appointment as circuit judge was made May 20, 1897.

Judge Gilbert is a native of Virginia, and was born in 1848. He removed to Williams-town, Massachusetts, when quite young, and was educated at Williams College. After graduating from that institution, he entered the law school of Michigan University. After completing his law course, he went to Oregon in 1871, and engaged in the successful practice of the law. He was elected to the legislature of that state in 1888. His appointment to the circuit court of the United States was made only a few months after the organization of the United States circuit court of appeals for the ninth circuit, so that his judicial career is nearly coextensive with the life of that court.

Among the many opinions of great importance which have been delivered by Judge Gilbert is that in the case of *The Willamette*

Valley, 29 U. S. App. 447, holding that a steamship operated by a receiver, if taken to another jurisdiction in the regular course of business, may be seized in admiralty on a maritime lien for supplies there furnished. That in the case of *Pacific Rolling Mills v. James Street Construction Co.* 29 U. S. App. 697, holds that a materialman cannot, under the statutes of Washington, have a lien on a cable street railway because the land is not subject to a lien. His decision most widely talked of is doubtless that in *United States v. Stanford*, 44 U. S. App. 68, in which he denied the right of the United States to recover in its suit for over \$15,000,000 against the estate of Leland Stanford. This decision was affirmed unanimously by the Supreme Court of the United States in 161 U. S. 412.

A Queer Voice.

The New York "Voice" says: "The proposition to raise money for the expenses of the war with Spain by an additional tax on beer must be distasteful to every right thinking prohibitionist. To wage a war for freedom in Cuba with the money that has been the price of slavery and death to thousands of our people is a tremendous solcicism." This proceeds on the theory that taxation is a privilege or favor which encourages and fosters the business that is taxed, instead of being a burden which, so far as it goes, tends to repression or restriction. It means free whisky and taxed milk; free tobacco and taxed flour. With such reasoning as this in their leading organ, prohibitionists need not wonder that their party gets little respect from the great majority of the people.

The Bacillus of Suspicion.

There is a peculiar brood of men, some of whom have been deemed to possess much intelligence, who have developed a morbid suspicion of plots and conspiracies. One declares that the delay in conquering Spain has no excuse except "to give time for the infamous bond scheme to get through Congress." Another, who bitterly attacks the government for making any war on Spain, and says that we should stop instantly, and pay damages, oracularly assures us that "the hand of the conspirator can be traced through the whole course of recent events, including the blowing up of the Maine." Still another of this class not long ago announced that the cause of our great Civil War of 1861 was a conspiracy of money lenders.

Only a brain sick with rank suspicions can believe such preposterous libels. One who propagates them must be pitied for a mind diseased or else despised for his infamy.

Free Men in Court.

The jealousy of the Anglo-Saxon for liberty, justice, and fair play is strikingly shown by the common-law rule that prohibits a prisoner to be manacled on his trial except in cases of extreme necessity, lest the manacles might embarrass his mental faculties or in some way prejudice his defense. Even in Lord Coke's time, 800 years ago, this was an established rule, and is laid down in his Institutes, 3 Co. Inst. 34. A late American case to this effect is *State v. Williams* (Wash.) 89 L. R. A. 821, in a note to which the authorities are reviewed. In terrible contrast with the fairness of these trials of free men is the torture with which for centuries the Spanish Inquisition extorted confessions from the innocent as well as the guilty. Liberty and justice, developing the mental power, forcefulness, and resourcefulness of the common people in Anglo-Saxon nations, give the secret of their mighty advance beyond decadent Spain.

Muddled Opinions.

A judicial opinion that fails to state with clearness the questions to be decided is fortunately an exception in this country. Yet there are some such. A very late opinion of one of our ablest courts makes repeated reference to a statute governing the case, but utterly fails

to quote or recite from it enough to make the opinion fully intelligible to one who does not already know the terms of the statute. The opinions of English judges, as reported, are frequently slipshod in this respect. They often indulge in diffuse discussion of the various phases of a statutory provision without deigning to state its terms, and with a serene assumption that every reader must, of course, remember its language or have a copy of the act in hand when he reads the case. Doubtless many American judges may learn much from the opinions of the English judges, but to do this they need not sacrifice the clearness and directness of statement in which American judges distinctly excel their British brethren.

Spiritualism as Insanity.

That belief in spiritualism is not an insane delusion is fully established by many cases cited in the note to *Kimberly's Appeal* (Conn.) 37 L. R. A. on pages 270 *et seq.* But these cases also recognize the possibilities of fraud in using such belief to manipulate the believer. Therefore, when a person obeys supposed spirit communications in making a disposition of his property, whether by will or otherwise, the courts scrutinize the transaction most closely to see that a fraud has not been perpetrated. In numerous cases it has been found that the belief has been played upon by disgusting hypocrites to enrich themselves out of the property of their deluded victims. The rule that one who gets a benefit from a confidential relation must prove the fairness of the transaction has fourfold force in case of supposed spiritual direction through a medium for the medium's own profit.

Electric Railroad in Country Highway.

The distinction between urban and country highways in respect to the uses which may lawfully be made of them has been frequently recognized by the courts, although the full extent of the difference is not clearly defined. This distinction is made in *Pennsylvania R. Co. v. Montgomery County Pass. R. Co.* (Pa.) 27 L. R. A. 766, in respect to electric railways. These are held to be additional servitudes on country roads, but not on city streets. The late Wisconsin case of *Zehren v. Milwaukee Elec. R. & L. Co.*—L. R. A.—, also holds that an "inter-urban electric railway

running upon the highways through country towns is an additional burden upon the highway." This question is of great practical importance in the present rapid development of suburban electric lines. In two states the question is already settled in favor of the abutter's right to compensation.

Original Packages at Retail.

The right of an importer to sell original packages at retail as well as at wholesale has been fully established by the Supreme Court of the United States in the late case of *Schollenberger v. Pennsylvania*, reversing the decisions of the supreme court of Pennsylvania, which held that retail trade in original packages was not protected as interstate commerce, and that putting up such packages for retail trade was a "transparent trick." The unsoundness of the doctrine of the state court was discussed by "Case and Comment" for November, 1897, Vol. IV., p. 62, where it was said that the so-called "trick" is a "mere exercise of a right to put up goods in a form that will be salable," and that retail as well as wholesale trade between states is interstate commerce. These conclusions seemed so plainly inevitable, notwithstanding the decisions of the state court to the contrary, that we ventured to point them out. They are now established by the Supreme Court of the United States, which says that "the right of the importer to sell cannot depend upon whether the original package is suitable for retail trade or not. His right to sell is the same, whether to consumers or to wholesale dealers in the article, provided he sells them in original packages."

Sliding Scale in Taxing Legacies.

Taxing legacies at higher rates as their amounts increase is held in the *Missouri* case of *State, Garth, v. Switzler*,—L. R. A.—, to be unconstitutional as a violation of the provision for uniformity, because the tax there in question was construed to be a tax upon property. But it is held in *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 288, Adv. S. 646, where a succession tax is held not to be a property tax but only a tax on the succession, as it is in most other states, that an increase of the rate of taxation as the legacies increase in amount is not a violation of the Federal Constitution. This establishes a principle of far-reaching importance, which may have large scope in regulating the

transmission of great estates when the owners die. Many people have trembled, foolishly enough, in the fear of a mythical tyranny of wealth. They may be much relieved to realize the power of the state over the transmission of property on the death of its owner. On the other hand, many people of wealth are likely to be alarmed at the possible tyranny of a majority. They may well take courage from the past. The voice of the people, though not always sounding like the voice of God, has never been permanently wrong.

Serving the Public without Pay.

Compelling a citizen to serve the state without pay is at least quite as much of a hardship as to take his property for public use without compensation. Yet the latter is prohibited by nearly all American constitutions, while the former is not entirely prohibited by any of them. In Indiana, Oregon, and Tennessee the Constitutions provide that "no man's particular services" shall be demanded or his property taken without just compensation. But even under this provision it is held that ordinary services such as may be required of all citizens or officials by law are not such "particular" services as to require compensation. *State v. Henley* (Tenn.) 89 L. R. A. 126, and note. By a similar rule the services of expert witnesses are held, in *Dixon v. People* (Ill.) 89 L. R. A. 116, and note, to be properly demandable without other compensation than ordinary witness fees. Men are often compelled to serve as jurors with only nominal compensation. So they may be obliged to work on highways and to serve in the militia or in the army in the time of war. In many ways the services of a citizen are subject to the call of the state. That men should so jealously guard their property by constitutional guaranties, and yet fail to create a similar constitutional protection against, being compelled to give their personal services to the state without pay, seems somewhat strange. The reason must be in the greater difficulty of measuring just compensation for such services than for property, or else in the fear that the state would be crippled by attempting to pay it. Yet the power has been so little abused that it remains almost unquestioned.

Indemnity Plus Investment.

To support its ingenious argument that there is no "property" in a life insurance

policy, "Rough Notes" says that a man who can afford to carry \$500,000 insurance "must be a producer or represent production of such value that at his death a corresponding loss is incurred by those who become the recipients of his wealth." This seems to be sheer assumption, which is not only unprovable, but untrue. If a man of wealth is healthy enough to pass a medical examination, his unproductiveness, and even the entire worthlessness of his life from every point of view, will not defeat the insurable interest of his family in his life. He may be a mere cumberer of the ground, whose sole function in life is to spend money that others have earned, and every year's continuance of his life may mean an additional loss to his heirs and legal representatives because he is steadily wasting his fortune, yet his life insurance is none the less collectible upon his death.

The element of indemnity arising from the presumption that a person's life is peculiarly valuable to his family is, indeed, sufficient to prevent a life insurance policy from being a mere wager contract, yet the feature of investment is no small element in most modern policies. In an endowment policy payable to the insured himself, this investment feature is particularly prominent. To say that a ten-year endowment policy involves nothing but indemnity to the family of the insured is manifestly absurd. It combines investment with indemnity—the business of a savings bank with that of life insurance. To say that there is no "property" in such a policy for \$100,000 that is nearing maturity is as untrue as to say that there is no property in a savings bank deposit. As to such policies the statement of "Rough Notes," that "indemnifying losers for the losses they sustain is all there is to insurance," is manifestly incorrect. Any fair and intelligent discussion of the taxation of such policies requires as the first step the frank recognition of the fact that they represent a property investment as well as indemnity. There may be abundant reasons against a tax on them, but it is certainly futile to deny that they constitute property.

Effect of Irresponsible Co-operating Cause.

The liability for an injury resulting from two independent causes, either of which alone would have caused the loss if the other had been absent, presents an interesting question of much nicety. In *Cook v. Minneapolis, St.*

P. & S. S. M. R. Co. (Wis.) 74 N. W. 561, — L. R. A. —, which was a case of the uniting of two fires either of which alone would have destroyed the plaintiff's property, and one of which was set by defendant's negligence, the novel doctrine is laid down that "where a cause set in motion by negligence reaches to the result complained of in a line of responsible causation; and another cause, having no responsible origin, reaches it at the same time so that what then takes place would happen as the effect of either cause, entirely regardless of the other, then the consequence cannot be said with any degree of certainty to relate to negligence as its antecedent." If each fire had been caused by the negligence of a responsible person, the court considers that the liability would be joint and several "because, whether the occurrence be intentional, actual, or constructive, each wrongdoer in effect adopts the conduct of his co-actor, and for the further reason that it is impossible to apportion the damage or to say that either perpetrated any distinct injury that can be separated from the whole."

But why should a wrongdoer whose own negligence is sufficient to cause the whole damage be deemed to adopt one co-operating agency more than another when he did not contemplate either of them? Why should he be deemed to adopt a responsible agency that merely happens to co-operate with his and not to adopt one that is irresponsible? What difference does it make with his wrong or with his liability therefor whether an agency that merely happens to unite with his was responsible or irresponsible, malicious or innocent? If his wrong was sufficient to cause the whole loss, how can he escape liability merely because of its unexpected and unnecessary reinforcement by another agency of any sort which does not change the result? Is it not as reasonable to impute to him the adoption of one chance reinforcement as well as another? But why should the adoption of any additional cause be imputed to him when his own causal agency is amply sufficient to accomplish the result, and would do so just the same if the other cause were absent? The inability to apportion the loss or the responsibility for it is, of course, the same whether the other cause is a responsible one or not.

The result of the decision is that when the acts or negligence of two independent wrongdoers happen to unite in causing a loss which either alone would cause without the other, the injured party can hold them jointly and

severally liable if he can trace back both agencies to the respective wrongdoers, but if either wrongdoer can escape detection, the other one also is exempt from liability. The result is unjust, and the reasoning in support of it unsatisfactory. Sound principle seems to justify the proposition that any person whose wrong operates to produce a loss, and would produce it without the help of any other cause, will not be relieved merely because it happens to be joined by some other cause that would also be sufficient of itself to produce the same result. This is the established doctrine in case of joint wrongdoers. The mere inability to establish the liability of one is no just defense to the other. And if the purely cumulative cause which unexpectedly co-operates with a wrong act is accidental and innocent rather than wrongful that fact does not seem to form any reasonable ground for denying the known wrongdoer's liability.

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Among the New Decisions.

Alteration of Instruments.

Signing an instrument in which the amount is written in pencil, and leaving it with an agent for delivery, is held, in *Walsh v. Hunt*, (Cal.) 39 L. R. A. 697, not to constitute such negligence as will render the maker liable to an innocent holder for the agent's forgery by raising the amount.

Animals.

Dogs, being domestic animals for the purpose of taxation under the Georgia Constitution are held, in *Wilcox v. State* (Ga.) 39 L. R. A. 709, to be such within the meaning of statutes against cruelty to animals.

Banks.

The right of one who has given a check to prevent the application of future deposits thereto is denied in *Gage Hotel Co. v. Union Nat. Bank* (Ill.) 39 L. R. A. 479, on the ground that in that state the check when presented to the banker is an absolute appropriation of money on deposit against which it is drawn.

A bank which takes a check instead of cash, without authority, on selling stock, and notifies its principal of the deposit of the check to his credit, and afterwards pays his check for the proceeds thereof, is held, in *Pepperday v. Citizens' Nat. Bank* (Pa.) 39 L. R. A. 529, to have made a voluntary payment which cannot be recalled.

Bicycles.

A person riding a bicycle without a light or signal of warning when objects can be readily

discerned only a few feet ahead of him and he is liable to meet moving vehicles or pedestrians is held, in *Cook v. Fogarty* (Iowa) 39 L. R. A. 488, to be guilty of negligence which precludes his recovering from the driver of a vehicle with whom he has a collision, when the driver does not see him.

Carriers.

A carrier that unloads goods during a storm on an open platform and leaves them unprotected from the weather because there is no building or agent at that place and the bill of lading provides for delivery on the platform at the risk of the owner is held, in *Allam v. Pennsylvania R. Co. (Pa.)* 39 L. R. A. 535, to be free from liability for injury to the goods, and such a contract is held not to be against public policy.

Commerce.

A pine box in which packages of cigarettes, each sealed with an internal revenue stamp, are placed, without any other packing or inclosure, is held, in *McGregor v. Cone* (Iowa) 39 L. R. A. 484, to be the original package, and, when that is opened, the packages of cigarettes are held subject to the state law.

The case of *Schollenberger v. Pennsylvania*, recently decided by the Supreme Court of the United States, holds that the right to sell original packages of oleomargarine is not lost because the packages are suitable for sale at retail to consumers.

Conflict of Laws.

Marriage in another state, where it is lawful, by a divorced man and his paramour, who go there to evade the law of their domicile, which prohibits their marriage during the life of his former wife, is held, in *Re Stull* (Pa.) 39 L. R. A. 539, to be invalid at their domicile.

Contempt.

Refusal to permit a man charged with contempt by publications as to a trial, to show in defense that they were true, is held, in *McClachy v. Superior Court* (Cal.) 39 L. R. A. 691, to be a deprivation of his constitutional right to make a defense, and a denial of due process of law.

Contracts.

A contract of employment of a railroad engineer, agreeing that he will not be discharged without just cause but shall be promoted ac-

cording to specified grades of service, is held, in *St. Louis, I. M. & S. R. Co. v. Mathews* (Ark.) 89 L. R. A. 487, to be lacking in mutuality, where he does not agree to serve for any specified time.

The remedy on promissory notes and warrants of attorney under statutes existing at the time they are made, which authorizes entry of judgment and issue and enforcement of execution thereon notwithstanding an assignment for creditors, is held, in *Second Ward Sav. Bank v. Schrank* (Wis.) 39 L. R. A. 569, to be an essential part of the contract which cannot be taken away by change of statute.

A subscription to secure the location of a college at or in a certain town on condition that a certain amount is subscribed is held, in *Rogers v. Galloway Female College* (Ark.) 89 L. R. A. 636, to be enforceable where the parties accepted the amount subscribed as sufficient and the college was located accordingly, although there proved to be a deficiency in the amount.

Corporations.

An extension of the business of a corporation into another state is held, in *Lewis v. American Savings & L. Asso.* (Wis.) 89 L. R. A. 559, to be within the power of the directors, and a deposit of securities made by them in order to comply with the law of such state is held not to be *ultra vires*.

By-laws providing that a transfer of the stock of an irrigation company shall be made only with the land for which it was issued are held, in *Spurgeon v. Santa Ana Valley Irrig. Co.* (Cal.) 89 L. R. A. 701, inapplicable to a sale of delinquent stock for default in payment of assessments.

Counties.

The raising of money by sale of bonds for a county building and exhibition at an exposition is held, in *State, ex rel. Douglas County, v. Cornell* (Neb.) 89 L. R. A. 518, to be for a public purpose or use which is authorized by the Constitution.

Damages.

Damages for mental anguish, independent of and unaccompanied by physical injury of any kind, are denied in *Peay v. Western Union Teleg. Co.* (Ark.) 89 L. R. A. 463.

Ejectment.

Ejectment to compel the removal of telegraph poles from a public highway over plaintiff's land on which the line constitutes an additional burden is sustained in *Postal Teleg. Cable Co. v. Eaton* (Ill.) 39 L. R. A. 723, when compensation has not been made to the owner.

Electrical Uses.

The fact that a wire charged with a dangerous current of electricity fell and caused injury is held, in *Snyder v. Wheeling Electrical Co.* (W. Va.) 89 L. R. A. 499, to make a prima facie presumption of negligence, but not a conclusive one, as the misfortune may have occurred from inevitable accident.

Evidence.

Oral evidence to show that the maker of a note was only an agent, and signed it under an agreement with the payee that the principal only should be liable, is held, in *Shuey v. Adair* (Wash.) 89 L. R. A. 478, to be inadmissible.

Executors and Administrators.

A claim for funeral expenses of a mortgagor of land is, in *Milward v. Shields* (Ky.) 89 L. R. A. 506, denied priority over the lien of the mortgage under a statute providing that burial expenses shall be paid before any *pro rata* distribution.

Fisheries.

The right of the state to protect fish in all streams through which they have freedom of passage to and from the public fishing grounds is sustained in *People v. Truckee Lumber Co.* (Cal.) 89 L. R. A. 581, although the streams flow over lands entirely subject to private ownership.

Fraud.

The mere naked assertion of the value of property by the vendor to the purchaser during negotiations for a sale, though consciously untrue and relied upon by the purchaser to his hurt, are held, in *Gustafson v. Rustemeyer* (Conn.) 89 L. R. A. 644, insufficient to constitute an actionable deceit.

Gas.

On the abandonment of a pipe line the removal of the pipe by a natural gas company is sustained in *Clements v. Philadelphia*

(Pa.) 89 L. R. A. 532, provided the right is exercised at the time and in the manner least harmful to the landowner and subject to payment for injury to growing grain or grass beyond the mere opening and filling of the trench.

Husband and Wife.

Under a power given to a wife to appoint another trustee instead of the one named in a trust deed executed by her husband for the benefit of the wife and her children, it is held, in *Stearns v. Fraleigh* (Fla.) 89 L. R. A. 705, that she may appoint the husband himself, if the former trustee resigns.

Insurance.

One entitled to a paid-up policy in proportion to premiums, paid on surrendering his policy, after paying three premiums, if he has not been in default more than six months, is held, in *Mutual Life Ins. Co. v. Jarboe* (Ky.) 89 L. R. A. 504, to be entitled to such paid-up policy on demand after three payments, if made during his lifetime, although the policy is not surrendered.

Insurance on wearing apparel, jewelry, etc., contained in a specified building is held, in *British America Assurance Co. v. Miller* (Tex.) 89 L. R. A. 545, not to cover the property at another place where the family was temporarily staying, although they went there periodically, as the agent knew.

Judgment.

A judgment *pro confesso* after striking out an answer because of defendant's contempt is held, in *Hovey v. Elliott* (N. Y.) 89 L. R. A. 449, affirmed 167 U. S. 409, 42 L. ed. 215, to be void on collateral attack as a denial of the constitutional right to defend.

Landlord and Tenant.

The right of a railroad company which purchases a ninety-nine year lease of a building to remove a small corner of it in order to make way for an elevated track is denied in *Bass v. Metropolitan West Side Elevated R. Co.* (C. C. App. 7th C.) 89 L. R. A. 711, although the building was erected by the tenant under a stipulation requiring compensation to him on the expiration of the lease, or in lieu thereof a certain extension of the lease.

Libel.

To publish that a debtor pleaded the statute of limitations, and to say that this is dishonest, is held, in *Hollenbeck v. Hall* (Iowa) 89 L. R. A. 784, insufficient to constitute a libel.

Loga.

The erection of a log boom on a navigable stream in violation of law is held, in *Miller v. Hare* (W. Va.) 89 L. R. A. 491, insufficient to give an individual a right of action unless he suffered a special and peculiar damage.

Minea.

Although a parol partition of land does not, as matter of law, include a partition of coal under the surface, it is held, in *Byers v. Byers* (Pa.) 89 L. R. A. 537, that the presumption is that the coal is included in the partition.

Municipal Corporations.

An ordinance precluding competition for a street-paving contract by requiring the use of asphaltum which can be obtained only from premises owned and controlled by one private corporation is held, in *Fishburn v. Chicago* (Ill.) 89 L. R. A. 482, to be void as against public policy in creating a monopoly, although there is a provision for letting the contract to the lowest bidder.

An ordinance against cruelty to animals is sustained in *State v. Karstendiek* (La.) 89 L. R. A. 520. With this case is an extensive note on municipal power as to nuisances affecting public morals, decency, peace, and good order.

An ordinance declaring the emission of dense black or thick gray smoke to be a nuisance, without any limitation as to the time of emission, or as to its being in fact a nuisance, or providing any inquiry as to these matters, is held, in *St. Louis v. Edward Heitzberg P. & P. Co.* (Mo.) 89 L. R. A. 551, to be invalid, as it is not sufficiently certain.

The right of a city to remove the turnout of a street-railway company forcibly and summarily, without notice or hearing, is denied, in *Cape May v. Cape May, D. B. & S. P. R. Co.* (N. J.) 89 L. R. A. 609.

An ordinance requiring a street-railway company to sprinkle streets without defining when and in what manner the sprinkling is to be done is held, in *State v. New Orleans City*

& L. R. Co. (La.) 39 L. R. A. 618, to be invalid, as it leaves the measure of duty to conjecture.

An ordinance prohibiting dogs from running at large on streets is sustained in *Hagerstown v. Witmer* (Md.) 39 L. R. A. 649, as an exercise of the general power to provide for good government, peace, and good order.

An ordinance prohibiting awnings over sidewalks except when on a "suitable frame" is held, in *State v. Clarke* (Conn.) 39 L. R. A. 670, to be void for uncertainty.

Negligence.

Negligence in selling loaded cartridges which are alleged to be but are not in fact the kind asked for is held, in *Smith v. Clarke Hardware Co.* (Ga.) 39 L. R. A. 607, to create a liability for a resulting injury to the purchaser.

Receivers.

The priority of claims against a receiver for wages when earnings which should have been applied to them have been wrongfully diverted to the benefit of bondholders is held, in *Drennen & Co. v. Mercantile Trust & D. Co.* (Ala.) 39 L. R. A. 623, to be enforceable in case of a private corporation such as a manufacturing or mining company as much as if it were a railroad company.

Replevin.

The right to replevin goods fraudulently purchased, without tendering back a partial payment of the consideration, is sustained in *John V. Farwell Co. v. Hilton* (C. C. E. D. Wis.) 39 L. R. A. 579, where the purchaser had realized from the sales more than the amount which he had paid.

Schools.

A condition authorizing the dismissal of a school superintendent is held, in *Freeman v. Bourne* (Mass.) 39 L. R. A. 510, to be implied in case circumstances arise which render him no longer able or fit to perform the duties of his position.

Set-Off.

The immaturity of a debt at the time of the debtor's death is held, in *Ainsworth v. Bank of California* (Cal.) 39 L. R. A. 686, insufficient to prevent its set off against a claim due to the estate, if it is mature at the commencement of the action.

Street Railways.

A street railway company which constructs a platform along a street temporarily submerged during a freshet is held, in *Finseth v. City & S. R. Co.* (Or.) 39 L. R. A. 517, to be required to make it reasonably safe, but not, as matter of law, to provide a light for it at night.

Taxes.

A herd of sheep driven through the state, not merely for transportation, but partially with the purpose of grazing and feeding them, is held, in *Kelley v. Rhodes* (Wyo.) 39 L. R. A. 594, to be subject to taxation as personal property in transit.

Trade-marks.

Unincorporated associations of workmen, although not manufacturers or vendors of goods, are held, in *Tracy v. Banker* (Mass.) 39 L. R. A. 508, to be within the protection of a statute against counterfeiting labels and stamps of "any person, association, or union."

Warehousemen.

The right to give warehouse receipts upon one's own property, in his own possession, to secure his own debt, is denied in *Franklin Nat. Bank v. Whitehead* (Ind.) 39 L. R. A. 725, even if he is a public warehouseman.

Wills.

An omission to provide for a child by will, which will entitle the child to share as in case of intestacy under a statute, is held, in *Re Callaghan* (Cal.) 39 L. R. A. 689, not to appear where a devise was made which was ineffective because testatrix did not own the property described.

A ruling in favor of the claim of proponents of a will, that its formal execution is to be assumed, is held, in *Re Stetson's Will* (Mass.) 39 L. R. A. 715, insufficient to prevent them from subsequently calling the subscribing witness to testify to its execution.

Writs.

An officer of a foreign corporation which has no place of business in the state, and has never done any business there, is held, in *Carstens v. Leidigh & H. L. Co.* (Wash.) 39 L. R. A. 548, when he was only casually and temporarily in the state, not subject to service of process so as to give jurisdiction to render judgment *in personam* against the corporation.

Recent Articles in Law Journals and Reviews.

"Current Notes on International Law."—23 Law Magazine and Review, 253.

"Prison Reform."—23 Law Magazine and Review, 234.

"Legal Reform in Egypt."—23 Law Magazine and Review, 224.

"Municipal London."—23 Law Magazine and Review, 210.

"Copyright Reform."—23 Law Magazine and Review, 195.

"The Land Transfer Act."—23 Law Magazine and Review, 179.

"The Attorney in the Poets."—23 Law Magazine and Review, 173.

"Legal Education Considered in Connection with the Proposed Teaching University of London."—23 Law Magazine and Review, 163.

"Can One Accept a Military Commission under the United States Government while Retaining a State Office?"—39 Weekly Law Bulletin, 305, 18 Chicago Legal Register, 292.

"The Law of Legislative Power in Canada."—18 Canadian Law Times, 108.

"The Law and the Soldier."—18 Canadian Law Times, 97.

"Translation from the Vivadaratnakara."—8 Madras Law Journal, 22, 72.

"Substantial Justice; Discretion of Courts."—8 Madras Law Journal, 16.

"The Hindu Law; Adoption of an Only Son."—8 Madras Law Journal, 1.

"Succession of Cognates under the Mitakshara."—8 Madras Law Journal, 53.

"Right to Commissions."—46 Central Law Journal, 392.

"The Joint and Several Liability of Tortfeasors, and Their Release."—46 Central Law Journal, 387.

"Government by Injunction."—1 Wisconsin Bench and Bar, 7.

"Duty to Repair; Rent."—46 Central Law Journal, 412.

"The Mortgagor's Rights as against the Mortgagee in Possession after Default."—46 Central Law Journal, 407.

"Reform in the Practice and Administration of the Law."—6 American Lawyer, 172.

"An Experiment in Codification."—6 American Lawyer, 169.

"Leaderless Government."—6 American Lawyer, 165.

"Rights of Labor Viewed by Courts."—3 Chicago Law Journal Weekly, N. S. 194.

"Rights of Police Officer."—46 Central Law Journal, 429.

"Absolute Privilege as a Legal Excuse in Libel Suits."—46 Central Law Journal, 426.

"Contract Exempting Employers from Liability for Negligence."—7 Yale Law Journal, 352.

"The Bicycle and the Common Carrier."—12 Harvard Law Review, 119.

"Mandatory Injunctions."—12 Harvard Law Review, 95.

"The Present and Future of the Law of Evidence."—12 Harvard Law Review, 71.

"Receiverships."—7 Yale Law Journal, 299.

"Attachment of the Body upon Civil Process."—7 Yale Law Journal, 295.

"Some Constitutional Questions under the Federal Anti-Trust Law."—7 Yale Law Journal, 285.

"Duty of Tenant to Surrender Possession."—5 New York Annotated Cases, 137.

"Taxation of Sheriff's Fees."—5 New York Annotated Cases, 132.

"Validity of Foreign Divorces."—5 New York Annotated Cases, 97.

"Rules against Perpetuities in Indiana." (Part I.)—1 Indiana Law Journal, 220.

"Intoxication as an Excuse for Crime."—7 Michigan Law Journal, 132.

"The Law and Practice of *Lis Pendens*."—57 Albany Law Journal, 45.

"Partnership; Exemption."—46 Central Law Journal, 472.

"Attempts to Commit Impossible Crimes."—46 Central Law Journal, 464.

New Books.

"General Corporation Act of New Jersey." By James B. Dill. (Baker, Voorhis & Co., New York.) 1 Vol. \$3. Pamphlet, \$1.50.

"Silvernall's New York Criminal and Penal Code for 1898." (W. C. Little & Co., Albany, N. Y.) 1 Vol. \$5.

"Engineering and Architectural Jurisprudence." By John Cassan Walt. (John Wiley & Sons, New York.) 1 Vol. \$6.50. Cloth, \$6.

"New Jersey Digest 1887-1898." By Albert C. Wall. (Soney & Sage, Newark, N. J.) 1 Vol. \$7.50.

"Pennsylvania Digest and Encyclopædia." By George Wharton Pepper and William Draper Lewis. (Rees Welsh D. & L. P. Co., Philadelphia.) 7 Vols. \$7.50 per Vol.

"Federal Practice." By A. H. Garland and Robert Ralston. (T. & J. W. Johnson & Co., Philadelphia.) 2 Vols. \$12.

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"Revised Code of Chicago." By William G. Beale. (E. B. Myers & Co., Chicago.) 1 Vol. \$6.

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"Foster's First Book of Practice." By Lemuel H. Foster. (The Collector Publishing Company, Detroit, Mich.) 1 Vol. \$1.

"The Tax Law of the State of New York." Edited by H. Noyes Green. (Matthew Bender, Albany, N. Y.) 1 Vol. \$3.

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The Humorous Side.

NOT YOUR NAME ALONE.—A change of one's name by act of the legislature is but a slight illustration of what the legislature can do, according to a late judicial opinion. It says, "Questions of sex, age, and moral fitness have always been regarded as proper subjects of legislative control." This shows that the legislature can do more than a fountain of youth and a Sunday school combined. It deserves the attention of the Medico-Legal Society.

ANOTHER PLACE.—A Missouri lawyer sends us the following:—Mr. B—— brought suit

for damages for the seduction of his daughter Mary under promise of marriage. The case was being tried before Judge S—— in the circuit court of C—— Co., Mo. The plaintiff was on the stand as a witness and was asked by his attorney this question: "Mr. B—— was your daughter Mary born in lawful wedlock?" "No, sir," he replied, "She was born in the state of Indiana." The explosion which followed in a crowded court-house may be imagined; it took some minutes to restore order.

AS AFFIDAVITS USUALLY BE.—An Oregon attorney who filed pretended affidavits to which he affixed his official jurat as notary public when the signers had never been sworn, but merely admitted the signing, excused himself by asserting that this was "the usual manner of administering oaths in such cases;" but he was not able to convince the court of that fact.

A unique formula for swearing to an affidavit adopted by a well-known attorney of western New York, whose characteristic nasal solemnity made it effective, was this: "I swear that this affidavit is as true as affidavits usually be."

THE SETTER UPSET.—A dead set by a street car made a dead setter of a dog that was standing on the track setting birds. In an action against the street-car company, Judge Wilkes, of Tennessee, holding that his pedigree might be proved, said: "This particular dog killed is shown to have had what in dog circles is regarded as 'blue blood,' and among these he belonged to the inner circles of the '400,'—a member of the 'F. F. T.'s' or 'First Families of Tennessee.' In addition, he was of English descent. His sire was 'Champion Tribulation, by imp. Beppo III., out of imp. Champion Lass of Bow.' His dam was 'Dick's Sue, by Dick, out of Ida Heath,' etc., for as many generations. It is fully shown that on both sides the ancestry is traced back to the best of English nobility blood in dog circles. . . . It is attempted to show that this dog's descent may not have been entirely pure, and it is intimated that he may have had 'terrier' blood in him, but the only foundation for this inference is the fact that he 'tarried' so long on the track when the car was approaching. But it appears from the record that it is a characteristic of the pointer when he sets to become oblivious to all earthly surroundings, and the bluer his blood the more absentminded he becomes on such an occasion."

Important Law Books

BAILEY, W. F. Personal injuries relating to Master and Servant. All conflicts and variations in rules in the different states pointed out. 2 vols. 1897, - - - \$12.00 net.

COLEBROOKE, W. Collateral Securities. A treatise on the Law and Principles of Collateral Security, as given for Loans of Money, Discounts of Commercial Paper, and other valuable Considerations, and the Rights, Duties and Liabilities arising from the relations of Borrowers and Lenders upon Collateral. Second edition. 1898. 1 vol., - - - \$6.00 net.

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Unexpected History.

"A divinity that shapes our ends" makes history that men have not planned. The most certain results of our present war now seem likely to be those which no man had anticipated. The "more perfect union" which our forefathers planned in making our Constitution seems to be coming a century after as an unlooked-for reward of a chivalrous enterprise. The Anglo-American friendship that has long been obscured by clamor of the foolish and passionate has suddenly become a fact too evident for the world to doubt; but no one seems to have dreamed that this would be a result of the war with Spain. Dewey's victory at Manila instantly changed our international situation and precipitated new problems. It now bids fair to prove the initial event of a new epoch in our national life.

Jewish Courage.

The conclusion that Jews are cowards is drawn by Prof. Cesare Lombroso from the fact that they furnish few suicides and few soldiers for the armies of Europe. The worthlessness of such an argument is apparent on its face. It assumes that cowardice is the only restraint upon self-destruction, and ignores the

restraining influence of ethical and religious ideas. Self destruction is in fact often induced, rather than prevented, by cowardice. Many a man takes his own life because he is afraid to face his fellowmen. It is even reported that men have been driven to suicide by terror of death.

The failure of Jews to enlist in the armies of Europe is no better proof of cowardice than their failure to commit suicide. Shameful indignities from almost every European nation have given the Jews too much cause for hatred in lieu of love, and made patriotism well nigh impossible. The enlistment of Jews in our present war against Spain is something for them and for the nation to be proud of. It shows they can have patriotism when they have a country.

Anglo-Phobia.

The spectacular performance of "twisting the British lion's tail," which a certain type of political fanatics have held to be a patriotic rite almost as sacred as that of "waving the bloody shirt," has lost its popularity. The mass of the people have long understood that our Revolutionary War was over, and likewise the war of 1812; but those of our congressional and journalistic politicians who think human conduct is dominated only by selfishness, passion, and jealousy have continued to play upon the supposed hostility of the American people to England, apparently ignorant of their strong, though undemonstrative, friendship for the mother country. But the dullest man can no longer fail to see it. Many of the Anglo-phobes themselves have had a change of heart. Those who have not are prudent enough to keep silent.

Anglo-Saxon Civilization.

The English-speaking race drawing together into a conscious unity of friendship is significant of world-wide results. Leading the world in civilization, it is powerful enough when united to be the dominating force among men. The growth of its civilization is by far the noblest chapter in the history of the world. Great Britain and America, as independent sister nations pushing on in sharp rivalry, yet in a fair and friendly spirit, should continue to lead the progress of mankind. The chief secret of Anglo-Saxon civilization is to be found in its universality. The ruling classes in many nations, ancient and modern, have had a high degree of civilization and culture, while the great mass of the common people have remained proletarian. Among the Anglo-Saxon peoples there has been a greater measure of equality and a greater development of individuality. In America our constitutional guarantees of equality have not been meaningless, but their operation has made the progress of this nation the marvel of the world. On the other hand, the lack of still more perfect equality is the parent of our most perplexing and dangerous problems. The ignorant masses who have been becoming increasingly envious and discontented constitute the only menace to our continued prosperity. To give them more enlightenment, and to raise them to a higher level of life, is necessary if our nation is to reach the summit of its superb possibilities. The glory and the greatness of Anglo-Saxon civilization is in the brains and character of the common people. Increase the average of individual manhood and we increase the nation's power. To-day all the world can see that our superiority to Spain is less in the number than in the quality of our men. The contrast teaches a lesson that we cannot learn too well. It inspires hope that America shall make still greater progress toward the ideal civilization in which there shall be no substratum of ignorance and degradation, but a "proud free people" among whom every man is a citizen and every citizen fit for self government.

American Snobs.

There are some among us of the snobbish sort, whose nature inclines them to worship and to imitate the superficial civilization of an aristocracy. They would educate the few and keep the many as a proletariat for hewers

of wood and drawers of water. They have no faith in humanity—no faith in God. Independent, sinewy, American manhood, free from superciliousness, on the one hand, and free from subservency, on the other, is, in their view, vulgar. Such men are, doubtless, honest enough in their views. The fact is they are substantially aliens in their own land and alien to its spirit. Their ideas of American character seem to be borrowed from our own "yellow" journals or from Europe. They cannot see the innumerable quiet philanthropies, the widely diffused ideals of usefulness, the unobtrusive heroism of self-denial, that American life everywhere presents to those who have eyes to see, and that are just now exhibited in superb military and naval service. A citizen of this country who can say of his countrymen, as a certain college professor was recently reported to have said, that they have "no ability to distinguish between what is honest and what is dishonest," and that it is their characteristic to be "trifling," thereby reveals his own isolation from the moral and spiritual forces of the nation and his pitiful ignorance of their existence. His shallow misjudgment of the character of his own people makes a damning epitaph for himself.

The Sapient Editor.

A periodical overflow of opinion tends to give an editor a pleasurable sense of his own value. He may come to think that this overflow, like that of the Nile, is needed to give a beneficent renewal to the world's fertility. Without asserting his own infallibility, he often seems to take it for granted.

Comments on the present war furnish excellent illustrations of this. Some newspapers, of which one New York daily is the leader, have exhibited great scorn of what they deem slowness and incompetence in the management of our Cuba campaign. Like children clamoring for the end of the journey as soon as it is begun they demand the conquest of Cuba immediately. Dewey's victory pleased them, and they demand that somebody else do again at once what Dewey did. Like a child crying for the moon they know what they want, but do not know so well the difficulty of getting it. "Fools rush in where angels fear to tread," and they also pass oracular judgment on what they know least about.

More temperate but equally ludicrous comment on the war appears in a leading monthly

review. The editors' conclusion that "the Spaniards thus far have been more than a match for us, not only in diplomacy, but also in their naval strategy," illustrates the fatal facility and the calm assumption of wisdom with which even an editor of ability can expose his unwisdom.

A Similitude.

Possession of a Confederate note, with an alleged intent to pass it as a valid obligation of the United States, was recently made the basis of an indictment under U. S. Rev. Stat. § 5430, on the ground that the note was "engraved or printed after the similitude of any obligation or other security issued under the authority of the United States." *United States v. Kuhl*, 85 Fed. Rep. 624. Judge Woolson held, however, that such similitude did not appear, and quashed the indictment. If the defendant really intended to pass the note as lawful money, there ought to be some statute to reach the case, but the indictment quashed in this case is little less than absurd. It recalls the attempt—or perhaps it was only the rumor of an intent—some years ago to prosecute a man for making a large board sign in the "similitude" of United States money.

Hypnotism.

Sensational reports have appeared in the newspapers from time to time respecting the defense of hypnotism in criminal cases. These, if believed, will deceive people. Several cases in which, by ignorance or falsehood on the part of news gatherers, hypnotism was made a sensational feature, did not involve the question in any way. Only two cases in the higher courts in this country have decided anything on the subject. One is *People v. Ebanks* (Cal.) 40 L. R. A. 269, which decides on this matter nothing except that the statements of a person made while hypnotized are not evidence in his own favor. The other is *People v. Worthington*, 105 Cal. 166, which held that the commission of a homicide by a woman who had been told to do it by her husband does not prove that she was hypnotized, and that, in the absence of proof that she was subject to the influence of hypnotism, testimony as to its effect was not admissible. An extensive note to the above case of *People v. Ebanks* collects, not only the judicial, but the scientific, utterances on the subject, and shows that, while it has received

prolific discussion, it is almost barren of legal adjudications or of established scientific conclusions.

Paying for a Life.

A curious fact in English law is the loss for centuries of the right to claim damages for the death of a kinsman. That right, recreated by modern statutes, seems to have been one of the most fully established of all rights in early English law, when civil and criminal procedure were not clearly distinguished. A schedule of prices to be paid for lives of men, as Prof. Maitland shows in his "*Domesday Book and Beyond*," was well established. The wergild of a villein or ceorl was 200 Saxon shillings, to be paid to his kinsfolk as compensation for his life, while a further sum of 80 shillings called a man-bot was to be paid to his lord. But for killing a serf his kinsfolk received a wergild of 40 shillings only, while his lord received a man-bot of 20 shillings. A thegn, on the other hand, was a "twelve hundred man," whose wergild was equal to that of six villeins or ceorls. Here seems to be a clear recognition of a private right of compensation for the loss of a kinsman's life. It is strange that it should have disappeared from English law to reappear again 600 or 700 years later. Prof. Maitland says that "in the 12th century the old system of wer and bot is already vanishing." It is in the present century that the right to compensation for the loss of the life of certain relatives has become generally established by statute, both in England and in the United States. Lord Campbell's act of 1846 is usually mentioned as the pioneer of the statutes on the subject. Yet Tiffany, in his "*Death by Wrongful Act*," calls attention to a Massachusetts statute of 1648 which provided for a fine of \$200, payable to the next of kin of a person killed because of defects in a highway or bridge. A few judges have insisted with much force that the common law gave a right of action for death, but the contrary doctrine seems to be now established. Yet if we say that the common law denies the right, we must mean the common law since the 12th century.

Street-car Transfers—Right to Wait for Seat.

A decision most welcome to tired mortals was announced by Judge Woodward in *Jenkins v. Brooklyn Heights R. Co.* 29 App. Div. 8, to the effect that a person having a street-railway transfer ticket which is so punched as

to show that it must be used within ten minutes may wait for a car in which he can obtain a seat, although it does not come within the time limited and others cars have passed on which he might have got standing room. This decision, however, is based on the provision of New York Laws 1892, chap. 676, which required the transfer ticket to be given without extra charge. It is held that the benefit of this statute cannot be made to depend on taking the car within ten minutes irrespective of the opportunity to get proper accommodations thereon. By reason of this statute the court distinguishes the case of *Heffron v. Detroit City R. Co.* (Mich.) 16 L. R. A. 845, in which the carrier's rule that a transfer ticket must be used within fifteen minutes was held valid. The court quotes other authorities to show that standing room in the passageway is not proper accommodation for passengers, and further declared that an arbitrary time limit, applying equally to the feeble and infirm, and which is only sufficient to allow a very narrow choice of cars, cannot be said to be such a reasonable regulation as the company is justified in making under the law. Section 104 of this statute requires transfers to be issued by every corporation entering into a certain contract. Construing this with the preceding section, the contract referred to seems to be one for the use by one company of the route or portion of the route of another. The court discusses the question only with reference to this statute, and does not decide anything as to transfers, if there are any, which do not come under the statute.

No Use for the Truth.

A journal called "The California Voice," published at Los Angeles, California, is roused at a recent article in CASE AND COMMENT, entitled "The Legalized Liquor Traffic." That article pointed out the falsehood of asserting that the Supreme Court of the United States, when it declared that there is "no inherent right" to sell intoxicating liquors, held either expressly or by implication that such sales were unlawful until legalized by statute, and showed that on the contrary it expressly upheld the validity of license regulations as an exercise of the police power to *impose conditions upon* "any lawful trade or business." This is a demonstration of the falsehood of quoting that case as authority for the statement that the liquor traffic was unlawful until "legalized." The whole case went on the un-

questioned assumption of a common-law right to carry on such business. The only question was whether that right was so absolute or "inherent" as to be protected by the Constitution against any restriction in the exercise of the police power. The court held that the police power could restrict the right. Now "The California Voice" falsely represents that the case entirely denies the existence of any such common-law right. But it does not give its readers any hint of the truth of the matter or of what the case actually decided. Instead of that it stubbornly quotes again that statement that there is "no inherent right to sell intoxicating liquors," and still tries to make its readers believe the falsehood that the court denied the lawfulness of such sales until legalized. After this fraud on its readers it piously concludes as follows: "The liquor traffic lives because of sophistry in high places, false teachings, dead consciences, corruption in politics, and the inconsistency of professed Christians." "The California Voice," in its zeal to combat drunkenness among men, should remember that among the drunkards and other outcasts who are excluded from good company hereafter the Revelator places "whosoever loveth and maketh a lie."

The Truth of the Matter.

Another person sends us from California a clipping which, after stating that the drink bills of the United States for one year, according to the figures of internal revenue commissioner Miller, are \$1,226,258,460, quotes from the Supreme Court of the United States this statement: "There is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of a state or of a citizen of the United States. As it is a business attended with danger to the community, it may be entirely prohibited." This truthfully states the doctrine of the Supreme Court of the United States and of the other courts of this country. The business "may be entirely prohibited" if an actual, working majority of the people agree that a prohibitory law is desirable and practicable.

The prohibition of the liquor traffic is only a further extension of the exercise of the police power, which already restricts it. The sale of anything which may be hurtful to the purchaser is within the reach of that power. Yet the fact that an article which a man voluntarily purchases may be used by him to his own hurt does not make the sale of it unlaw-

ful at common law. The sale of gunpowder, firecrackers, quack medicines, chloral, chloroform, opium, and a multitude of other things, may be injurious or dangerous to the buyer in greater or less degree, but, if he is competent to do business, the sale is lawful unless it has been prohibited by law. This is exactly the case with the sale of intoxicating liquors. Until the state interferes, such sales are within the general rule that men have liberty to buy and sell at their pleasure. Some men discuss this question as if the purchaser of intoxicating liquor was always a slave, compelled to buy and drink at the pleasure of the seller. This is at the bottom of the constant comparison between the tyranny of the slave power and that of the rum power. But with all due allowance for those who have a diseased appetite, the ordinary drinker's freedom of choice is a fact which it is not reasonable or wise to ignore. He is a factor in the traffic as he also is a factor in the making of the laws.

The law of the matter is all summed up in this: A contract for intoxicating liquors is like buying or selling other things which may harm the buyer. It is an exercise of the common-law right of contract, but subject to the police power of the state, which may regulate, restrict, or prohibit it altogether as the people of the state may deem best. It has not been "legalized" because it was never illegal except as modern enactments have made it so. This is established beyond chance of dispute by the whole body of judicial decisions on the subject. But it can be made illegal whenever the people choose to make it so.

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Among the New Decisions.

Animals.

A traveler going into the yard of a feed and livery barn which is open to patronage by the public, and at which his team is being kept

for the night, in order to see that his buggy has been put into the barn and to get some articles from it, is held, in *Shultz v. Griffith* (Iowa) 40 L. R. A. 117, to have a right of action against the proprietor for injuries inflicted upon him by a dog.

Attorneys.

The effect of a conviction of felony as a ground for disbarring an attorney is held, in *Re Kirby* (S. D.) 39 L. R. A. 856, to continue notwithstanding the pendency of a writ of error and supersedeas.

Bills and Notes.

Sureties on a note made to raise money by discount are held, in *Greenville v. Ormand* (S. C.) 39 L. R. A. 847, to be released by the discount of the note by a person other than the nominal payee, on the payee's mere indorsement of the note without recourse.

A note payable in specified bonds at par is held, in *Johnson v. Dooley* (Ark.) 40 L. R. A. 74, to continue to be payable in such bonds notwithstanding a failure to pay or tender the bonds on the day the note is due, where the note does not give a mere privilege or option to pay in bonds, but makes a positive and absolute promise to pay in that manner.

Carriers.

A conductor beating a passenger who slapped his face with his hand is held, in *St. Louis S. W. R. Co. v. Jones* (Ark.) 39 L. R. A. 784, to render the carrier liable if he uses excessive force, and the carrier has the burden of proving that he used only such force as was necessary to repel the assault.

A carrier agreeing to transport and forward fruit by passenger train service is held, in *Colfax Mountain Fruit Co. v. Southern Pac. Co.* (Cal.) 40 L. R. A. 78, to be liable for such service until the fruit reaches its destination, although it has stipulated that its responsibility as common carrier shall cease at the point where the fruit leaves its road.

Case.

The remedy for failure of a servant or agent to pay over money on demand after collecting it for his principal is held, in *Royce, Allen, & Co. v. Oakes* (R. I.) 39 L. R. A. 845, to be by assumpsit or debt, and not by trespass on the case.

Conflict of Laws.

A note to pay a bet on a horse race run in another state where such notes are presumed valid, and where a note of which this is a renewal was given, is denied enforcement in North Carolina, in the case of *Gooch v. Faucette*, 39 L. R. A. 885, on the ground that its enforcement is contrary to the public policy of the state, even if the note is to be deemed a contract of the other state in which it would be valid.

Contracts.

An agreement by the owners of race horses entered at certain stake races, to divide equally the premiums and stake moneys awarded to any of their horses, is held, in *Hankins v. Ottinger* (Cal.) 40 L. R. A. 76, to be valid, and not a wagering contract.

A partnership for horse racing on a bet with a person whom the partners regard as a "sucker" and a "big snap," into which they induce him to enter by making him think he has a sure thing and by deceiving him into the supposition that their horse is untrained and undeveloped, while they think they have a "dead mortal clinch," is held, in *Morrison v. Bennett* (Mont.) 40 L. R. A. 158, to be such a conspiracy to defraud that the court will not aid either of the partners to obtain an accounting of the profits.

Convicts.

A criminal assault by a convict at large is held, in *Henderson v. Dade Coal Co.* (Ga.) 40 L. R. A. 94, to be an unanticipated consequence of his being at large, and therefore one for which his custodian was not liable to pay damages, even if he had been negligent in failing to keep the convict safely confined.

Corporations.

An action against what purports to be a corporation, to recover a tax which it is required to pay as a condition precedent to corporate existence, is held, in *Maryland Tube & Iron Works v. West End Imp. Co.* (Md.) 39 L. R. A. 810, insufficient to give it a legal existence for all purposes, or to estop the city from denying its corporate existence.

Courts.

An attempt to give to a superior court or judge thereof the jurisdiction to approve and adopt or modify a plan for locating and constructing a street railway, including the determination of the streets to be occupied and other questions involved, is held, in *Norwalk Street R. Co.'s Appeal* (Conn.) 89 L. R. A. 794, an attempt to confer power which is not judicial, and which cannot, therefore, be constitutionally imposed on the judges or court.

Criminal Law.

The ancient right of a person accused of crime under indictment or information, to appear in court unfettered, is held, in *State v. Williams* (Wash.) 89 L. R. A. 821, to be preserved by legislative adoption of the common law, and the constitutional right to appear and defend in person is held to include the right to appear unfettered, unless restraint is necessary to secure the safety of others and the custody of the prisoner.

An indeterminate sentence for a convict, not more than the maximum nor less than the minimum prescribed by statute for the specified crime, is held, in *Miller v. State* (Ind.) 40 L. R. A. 109, to be constitutional.

Easements.

The right of passage through a barway as part of a right of way by prescription is held, in *Nichols v. Peck* (Conn.) 40 L. R. A. 81, to be preserved notwithstanding a failure to use it for eleven years after the barway has been made impassable by lowering the highway with which it connected, and the use of a substitute barway about 70 feet distant under an implied license.

A way of necessity is held, in *Ritchey v. Welsh* (Ind.) 40 L. R. A. 105, to be created on the partition of lands, in the absence of anything in the record to the contrary, if it would have been created on conveyance or devise of one of the parcels by the common ancestor.

Embezzlement.

A receiver is held, in *State v. Hubbard* (Kan.) 89 L. R. A. 860, not to be an agent within the meaning of a statute as to embezzlement by agents.

The right of an abutting owner to compensation for damage caused by the poles and

wires of an electric railway in the street is sustained in *Jaynes v. Omaha Street R. Co.* (Neb.) 89 L. R. A. 751, and it is said that it is not necessary for this purpose that the road should be an additional burden upon the easement, as matter of law, under a constitutional provision for compensation in case of property damaged for public use.

Eminent Domain.

The occupation and assumption of exclusive possession of submerged lands under a navigable stream owned by, or leased by the state to, a citizen, by the United States government in changing the channel of the stream for the purpose of improving its navigation, is, according to *Brown v. United States*, 81 Fed. Rep. 55, a taking of private property for which compensation must be made.

Evidence.

Insanity set up as a defense on a trial for murder is held, in *Kelch v. State* (Ohio) 39 L. R. A. 787, to require it to be established by a mere preponderance of the evidence.

The rule that the mere happening of an accident is not sufficient to show negligence as between persons having no contract relations with each other is applied in *Stearns v. Ontario Spinning Co. (Pa.)* 89 L. R. A. 842, to the case of an injury by the falling of the head of an ax from the door in the fifth story of a building, when the ax flew from the handle while being used by a competent person, after due care in the inspection of the instrument.

The failure of a defendant to examine as a witness an employee who was present at the transaction in question is held, in *Western & A. R. Co. v. Morrison* (Ga.) 40 L. R. A. 84, sufficient to give rise to an inference that his testimony, if given, would have been prejudicial to his employer, and the tender of the witness to the other party is held insufficient to change the presumption.

Executors and Administrators.

The right of an administrator *de bonis non* to maintain an action against the estate of his predecessor for money of the estate wrongfully received by a predecessor, and not accounted for, is denied in *Hodge v. Hodge* (Me.) 40 L. R. A. 33, if such money is not distinguishable as part of the intestate's property.

Incompetent Persons.

A judgment against an insane person, and the sale of real estate in satisfaction thereof, are held, in *Spurlock v. Noe* (Ky.) 39 L. R. A. 775, not subject to be set aside long after on the ground of his insanity, if he was going at large and attending to his own affairs, without objection, up to the time of the sale, and no steps have been taken to set aside the judgment when his committee is appointed two years after.

Injunction.

An injunction against the plaintiff is held, in *Sternberg v. Wolff* (N. J.) 39 L. R. A. 762, to be properly imposed as a condition of a similar injunction in his favor to limit the power of the defendant to make promissory notes or checks for a corporation in which they have equal interests.

An injunction against the proprietor of a theater to prevent breach of a contract to furnish the theater and equipment to the manager of a company for a certain time, and to prevent him from furnishing the theater to a rival company during that period, is denied in *Welty v. Jacobs* (Ill.) 40 L. R. A. 98, as the contract is not one that can be specifically enforced.

Innkeepers.

Persons attending a club banquet at a hotel on the invitation and at the expense of the club, which had a contract to pay a specified sum for each plate furnished, were held, in *Amey v. Winchester* (N. H.) 39 L. R. A. 760, to have no right of action against the proprietor for the loss of their hats left by them on a rack at the entrance of the dining room, although they had been registered and assigned a room at the hotel.

Insurance.

The fact that fireworks were on exhibition in a store when a policy of insurance was issued on the stock, or that one of the firm of agents which issued the policy soon after purchased fireworks at the store, is held, in *Phoenix Ins. Co. v. Flemming* (Ark.) 39 L. R. A. 789, to be insufficient to show knowledge of the agent when issuing the policy that the fireworks were kept in stock.

A building that has lost its identity and specific character as a building, and become so far disintegrated that it cannot be properly

designated as a building, although some parts of it may remain standing and the lower floors can be safely used for rebuilding, is held, in *O'Keefe v. Liverpool & L. & G. Ins. Co. (Mo.)* 39 L. R. A. 819, to be a total loss within the meaning of a statute requiring full payment.

Whether an accident or a disease caused the death of a party whose life is insured is held, in *Modern Woodmen Acc. Asso. v. Shryock* (Neb.) 39 L. R. A. 826, to be a question for the jury unless the proofs are so convincing that all reasonable men, in the fair exercise of judgment, would be brought to the same conclusion.

Landlord and Tenant.

A man who hires lodging rooms in a dwelling house, and then brings dissolute and immoral persons to those rooms, and applies them to the purposes of assignation or to create a nuisance therein, is held, in *Sullivan v. Waterman* (R. I.) 39 L. R. A. 773, to be liable to the owner of the building for injury to the good name of the house and for damage to his custom and business.

Master and Servant.

Negligence of a foreman in a quarry in failing to give timely warning of a blast, whereby one of the workmen is injured, is held, in *Belleville Stone Co. v. Mooney* (N. J.) 39 L. R. A. 834, to be in respect to the duty of the employer and imputable to him, and not one of the obvious dangers of which the risk was assumed by the employee.

A release by an employee of an express company of all liability for injuries sustained by negligence of the employer "or otherwise" is held, in *Pittsburg, C. C. & St. L. R. Co. v. Mahoney* (Ind.) 40 L. R. A. 101, to include the liability of the express company to a railroad company to hold the latter harmless against claims of the expressmen for injuries, and precludes an action against the railroad company for causing the death of the employee.

Mines.

The drilling of oil wells by each owner of adjoining lands near the division line, so that each may obtain the amount of oil contained in his land, is held, in *Elley v. Ohio Oil Co. (Ohio)* 39 L. R. A. 765, to be lawful and to afford each of them sufficient protection against the other.

Mortgage.

The exemption of two cows from a chattel mortgage given by a householder is held, in *Harley v. Proconier* (Mich.) 40 L. R. A. 150, to be satisfied if the cows are selected by him, although his wife may wish to select other cows instead.

The application of the proceeds of a sale under a deed of trust to the first of two notes secured is held, in *Owings v. McKenzie* (Mo.) 40 L. R. A. 154, to be valid as against objections

by mesne conveyancers who by purchase and sale of the property have become sureties, although their liability has been released by extension of time.

Municipal Corporations.

A lease of city gas works is held lawful in *Baily v. Philadelphia* (Pa.) 39 L. R. A. 887, against a variety of objections, and it is held not to constitute a delegation of any municipal power.

A debt for the purchase of an electric-light plant for a municipal corporation is held, in *Mayo v. Washington* (N. C.) 40 L. R. A. 163, not to be one of the "necessary expenses" of the town which can be incurred without a vote of the majority of the qualified voters and legislative authority.

The intoxication of a passenger standing on the running board of a street car is held, in *Kingston v. Fort Wayne & E. R. Co.* (Mich.) 40 L. R. A. 181, not to absolve the company from exercising care toward him, or to prevent his recovering damages if injured by the carrier's negligence.

Parent and Child.

The children and heirs of a life tenant, to whom a remainder is given by statute under a deed to a person and his "bodily heirs" are held, in *Clarkson v. Hatton* (Mo.) 39 L. R. A. 748, not to include an adopted child of the life tenant, where at the enactment of the statute there was no law authorizing the adoption of children. The life tenant cannot destroy the vested right of the statutory heirs by an adoption.

Sale.

The retaking by a vendor, as owner, of property sold by conditional sale with a reservation of title, and his giving a credit to the vendee for a part of the price of the property, retain-

ing the instalments of purchase price paid, as the contract allowed, for the use of the property, is held, in *Perkins v. Grobben* (Mich.) 39 L. R. A. 815, to preclude an action for the balance of the purchase price on a note therefor which provides that the property may be retaken, and also that a suit on the note shall not waive title to the property.

Schools.

The right of women to vote at a school meeting for a director of a district is held, in *Harris v. Burr* (Or.) 39 L. R. A. 768, to be allowed by a constitutional provision limiting to male citizens the right to vote "at all elections authorized by law," where another provision gives the legislature power to provide a system of common schools.

Street Railways.

The killing of a deaf and dumb boy by an electric car which had defective brakes preventing the motorman from stopping it with proper readiness is held, in *Thompson v. Salt Lake Rapid Transit Co.* (Utah) 40 L. R. A. 172, to make the street-car company liable for damages even if the boy was negligent.

Sunday.

The Pennsylvania Court of Common Pleas holds in *Fleischman v. Rosenblatt*, 20 Pa. Co. Ct. 512, that a promise of marriage is not within the Pennsylvania statute forbidding the performance of any worldly employment or business whatsoever on Sunday, works of necessity and charity excepted.

Taxes.

The exemption of educational institutions from taxation is held, in *Kentucky Female Orphan School v. Louisville* (Ky.) 40 L. R. A. 119, to include a school for the free education of female orphan children, although it is under the control of a particular religious denomination, and receives day pupils, who pay tuition if able to do so.

Trespass.

One who enters upon his own land, and tears down a fence which has been built to inclose it by a person who wrongfully took possession of it is held, in *Stilwell v. Duncan* (Ky.) 39 L.

R. A. 863, to be not liable to an action for trespass, but in such action entitled to make the counterclaim for damages to the freehold.

Trusts.

A trust to place one's property beyond the reach of creditors, while retaining full enjoyment of the income and revenues thereof through the instrumentality of a trustee, is held, in *Brown v. McGill* (Md.) 89 L. R. A. 806, one which cannot lawfully be created even by a married woman or a woman in contemplation of marriage.

Unborn Children.

Persons yet unascertained and unborn are held, in *Loring v. Hildreth* (Mass.) 40 L. R. A. 127, to be sufficiently represented by a guardian *ad litem* in a bill to remove a cloud upon title, and such a proceeding is held not to deprive them of their rights without due process of law.

Unfair Competition.

In England it is held in *Ajello v. Worsley* [1898] 1 Ch. 274, that an advertisement by a dealer in pianos, of a new piano of a certain manufacture at a wholesale price, in consequence of which other dealers were caused to give up dealing with such manufacturer, gives rise to no cause of action, although continued after such dealer ceases to have in stock any piano of such manufacture.

Waters.

The removal of a water meter by a commissioner is held, in *Ladd v. Boston* (Mass.) 40 L. R. A. 171, to be within his discretion, notwithstanding the consumer has so arranged his fixtures while having the meter that its removal will require him to pay more than twenty times as much as other water takers pay for the same quantity of water, when it does not appear that the rates charged for fixtures are unreasonable or unjustly discriminating.

New Books.

"The Church and the Law." By Humphrey J. Desmond. (Callaghan & Co., Chicago, Ill. 1 Vol. \$1.

"The Elements of the Law of Public Corpora-

tions." By Charles B. Elliott. (Callaghan & Co.) 1 Vol. \$4.

"Tennessee Cases." Edited and Annotated by Robert T. Shannon. (Marshall & Bruce Co., Nashville, Tenn.) 1 Vol. \$5.

"Tax Laws of New York." Edited by Cumming & Gilbert. (Baker, Voorhis & Co., New York.) 1 Vol. \$5.

"The War Revenue Law of 1898." Annotated by Heydecker & McMahon. (Matthew Bender, Albany, N. Y.) 1 Vol. \$2. Cloth with law sheep back, \$1.50.

"The Domestic Relations Law of New York." Annotated By Frank B. Gilbert. (Matthew Bender) 1 Vol. \$2.50.

"War Revenue Law, with Index." Washington Law Book Co. (Washington, D. C.) Paper, \$25.

"United States Bankrupt Law, 1898. (Washington Law Book Co.) Paper, \$50.

"The Bankrupt Law." Compiled, with Index, by Nathan Frank. (F. H. Thomas Law Book Co., St. Louis, Mo.) Cloth, \$1.50.

"Black on Bankruptcy." Annotated Edition of New Bankrupt Law. (West Publishing Co., St. Paul, Minn.) Cloth, \$2. Sheep, \$2.50.

"Bump on Bankruptcy." (In Press.) 11th Edition, 1898. (W. H. Lowdermilk & Co., Washington, D. C.)

Recent Articles in Law Journals and Reviews.

"Levasseur's American Workingman."—18 Political Science Quarterly, 321.

"The German Exchange Act."—18 Political Science Quarterly, 286.

"Official Tariff Comparisons."—18 Political Science Quarterly, 273.

"The Local Government Board."—18 Political Science Quarterly, 232.

"The Continental System."—18 Political Science Quarterly, 213.

"Evidence Illegally Obtained."—7 Michigan Law Journal, 150.

"Mandatory Injunctions."—1 Wisconsin Beach and Bar, 147.

"Effect of Insolvency upon the Statute of Limitations."—46 Central Law Journal, 493.

"Contraband of War."—104 Law Times, 569.

"The Merger of Trespass in Felony."—104 Law Times, 498.

"Liability of Tenants for Life in Respect of Repairs on Leasehold Property."—104 Law Times, 450.

"Some Notes on Divorce."—10 Green Bag, 239.

"Preparation of a Legal Brief."—6 American Lawyer, 219.

"The Draft System and Attachments in California." 6 American Lawyer, 217.

"The Appointing Power; Its Location and Limits."—6 American Lawyer, 212.

"Philosophy of the Law."—6 American Lawyer, 210.

"Primitive Legal Conceptions in Relation to Modern Law."—6 American Lawyer, 205.

"Reading from Medical Works."—46 Central Law Journal, 515.

"The Effect of State Legislation upon the Liability of the Husband for the Torts of the Wife."—46 Central Law Journal, 511.

"Trademarks under the English Law."—83 The Law Journal, 313.

"The English Law of Trade, or Firm, Name."—83 The Law Journal, 311.

The Humorous Side.

DOG DAYS IN COURT.—A pretty costly dog in Michigan was found to have devoured \$10 worth of meat at one sitting. *Cheney v. Russell*, 44 Mich. 620.

If a dog greedily and rudely goes behind the counter in a shop, and there feloniously applies to his own use bread and cheese left for mice and rats, and dies from the effects of poison spread upon the comestibles, his death does not lie at the shop keeper's door, though he die there. *Appleton, Ch. J., in State v. Harriman*, 75 Me. 562, 46 Am. Rep. 423, citing *Stansfeld v. Bolleng*, 22 L. T. Rep. N. S. 799, Ex.

On the prosecution of a negro for stealing a dog with a collar on, when a demurrer to the indictment was sustained because it was not larceny to steal a dog, the prosecution claimed that he also stole the collar that was on the dog, but the defense claimed that the negro took the dog only and the dog took the collar. The prisoner was finally discharged. 8 Cent. L. J. 554.

A license to keep a yellow and white dog named Dime does not give authority to keep a black and white Newfoundland dog named Nigg. *Com. v. Barbany*, 123 Mass. 245.

In Massachusetts there was an independent Mugwump dog that wouldn't wear any man's collar. His head was so small and tapered so much from the neck that no collar would stay on. *Morewood v. Wakefield*, 133 Mass. 240.

The habits of dogs are judicially known, and one court declares that "it is not an unfrequent occurrence for a dog to visit as well as anybody else." *Burnham v. Strother*, 66 Mich. 519.

Where a small dog was away from home *décolleté*, although the statute required a collar, and was killed by a large dog, and the defense was that the killing was lawful because of the want of a collar, it was held by the court that the big dog was not *de jure* or *de facto* a police officer or constable, and was not shown to have examined the records to see whether or not the little dog had been licensed to travel without a collar. *Heisrodt v. Hackett* (Mich.) 8 Cent. L. J. 479.

In an action for killing a dog the defendant can say: "He was a wolf in the clothing of a dog, a *caput lupinum*, . . . and if the plaintiff had placed his affections on him it was not on a noble animal, but on the vilest cur that ever cut the throat of a sheep or sucked his blood." *Lentz v. Stroh*, 6 Serg. & R. 34.

A doggone cur is disrespectfully spoken of in a Georgia case as "a worthless, bobtailed, bench-legged fce." *Patton v. State*, 98 Ga. 111, 24 L. R. A. 782.

In a Texas case it was said (truthfully or otherwise) that a certain Newfoundland dog was trained to signal the arrival of any person, and that his master could tell from his bark whether the person approaching was man, woman, or child. *Heilgmann v. Rose*, 81 Tex. 222.

The canine *cause célèbre* is *Wiley v. State*, 23 Barb. 506, which was a suit to recover for the killing of one dog by another. The judge showed much dog learning although he confessed his limitations. He said: "I am constrained to admit total ignorance of the code duello among dogs, or what constitutes just cause of offense to justify their resort to the *ultima ratio regem*, a resort to arms, or rather, to teeth, for redress; whether jealousy is a just cause of war, or what different degrees and kinds of insults or slight, or what violation of the rules of etiquette, entitle the injured or offended beast to insist upon prompt and appropriate satisfaction." The court also suggested the trouble that would arise in such a suit if the plea were self defense, averring that "he did necessarily a little bite, scratch, wound, tear, devour and kill the plaintiff's dog, doing no unnecessary damage to the body or hide of the said dog." The court in this case also held that "the courtesies and hospitality of dog life cannot well be regulated by the judicial tribunals." Students in this department should carefully read this whole case.

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VOL. 5

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No. 3

CASE AND COMMENT

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The American Bar Association.

The success of this year's meeting of the American Bar Association, held at Saratoga on August 17, 18, and 19, was such as to call out many expressions of satisfaction from members present. A felicitous address of welcome was delivered by Chief Judge Parker of the New York court of appeals, to whom a reception was given on the evening of August 17. The president's address by Judge Howe, of Louisiana, was a skilful *résumé* of the year's legislation. Such a *résumé* has the continuity of a chapter from the dictionary, but Judge Howe gave it many bright touches which kept the interest of all hearers. An address by Joseph H. Choate on trial by jury, which has already been widely published, was a clear and strong defense of this ancient common-law mode of trial, including, as an essential feature, the necessity of a unanimous verdict. The lack of any satisfactory substitute for jury trial was emphasized, and the remedy for the evils of the system declared to be in the improvement of the quality of judges and lawyers, as well as of jurors. The valuable work of the various committees cannot be adequately touched upon here, but it may be said that the report of the work to secure uniformity of state laws was highly encouraging. The adoption by seven states

already of the recommended statute on negotiable paper gives hope that in this important branch of the law we may, at no distant date, have one law throughout the United States. This is but one of the indications of the valuable work that this association is doing.

The closing banquet, at which Edmund Wetmore, of New York, presided, was pronounced by an expert on the subject to be the first perfect banquet he ever attended. The speeches were of surprisingly high average. The chief of them all was the magnificent address of W. Bourke Cockran, in which he traced a comparison of the lawyer and the soldier. When he spoke of the course our nation should pursue toward the people of the Philippines, and particularly the spirit and motives that should guide us, he rose to an extraordinary height of noble eloquence.

Shooting Judges.

The shooting of an English judge on the bench by a bailiff against whom he had just rendered a decision has raised something of a commotion in England. The dastardly attack was made on Judge Parry at Manchester, and two shots took effect, one in his neck and the other in his left cheek, but did not prove fatal. The "Law Journal" mentions an attempt, in 1878, to shoot Sir George Jessel, and also the shooting of Judge Bristowe in 1889, from which he never entirely recovered. In addition to these, it mentions the throwing of an egg at the head of Vice Chancellor Malins, which was done by an American. These are the only instances of the kind that the "Law Journal" can recall. Unfortunately such things have been done on this side of the water. The attempt of Ex-Judge Terry to shoot Mr. Justice Field of the United States

Supreme Court while on his circuit in California is still fresh in the minds of the people. So, also, is the assassination of a Kentucky judge not many years ago. But the number of such desperate crimes has been in this country, as well as in England, exceedingly small in proportion to the multitude of men, some of them desperate, with whom the courts have to deal.

Dogs as Property.

There is a peculiar inconsistency in the common law on the subject of property in dogs. "A base property" is what it is called in *Com. v. Maclin*, 3 Leigh, 809, and this expresses what many courts have said in substance. Yet when the many cases on the subject are marshaled, as in the recent note to *Graham v. Smith* (Ga.) 40 L. R. A. 503, it clearly appears that even at common law the ownership of a dog was protected by civil remedies, although no criminal prosecution could be had for stealing "dogges" of any kind. But now in England, since the statute of 10 Geo. III. chap. 8, and under the statutes of many states in this country, dogs are deemed property in criminal, as well as in civil, cases. The strange rule of the common law, that there could be no larceny of a dog, has been explained by the fact that larceny was punishable by death, and it was not deemed fit that a man's life should be given for a dog. Yet at the same time a dead dog's skin was the subject of larceny. A hawk was also a subject of larceny because it was used by noblemen and princes for hunting. 1 Hale, P. C. 512. These reasons picture a semi-barbarous age. It is strange enough that the rule they created should still survive in the law of some of the United States.

Rents after Lessor's Death.

Who is entitled to rents after the lessor's death is a question that lawyer's can readily answer in most cases. Rents accrued, but not paid, during the life of the lessor usually belong to the executor or administrator. Those accruing after his death usually belong to the heirs. But on a covenant to pay rent, appended to a lease, which did not mention heirs, executors, administrators, or assigns, it was held, in *Walsh v. Packard* (Mass.) 40 L. R. A. 321, that the administrators were the proper parties plaintiff, although the

heirs were the only persons who would suffer substantial damages by nonpayment. The court said: "Although rent savors of the realty, any warranty of insurance of rent is a purely personal contract of which another than the original contractee can avail himself only on principles of contract." But it was assumed that the recovery would be held in trust for the heirs. This illustrates one of the difficult questions that arise in this comparatively simple subject. The common-law rule is still quite general in this country, as the note to the above case shows, but in some states the statutes have given the administrator the right to all accruing rents, and in others the right to them for a limited period.

Scientific Works as Evidence.

Rules of evidence are mainly bottomed on presumptions. An expert is allowed to testify on a matter within his subject because his proved qualifications make a presumption that he knows about the particular matter in question. Dying declarations are admissible because it is presumed that a dying person will tell the truth. The best evidence is required, although it may not certainly be true, because it has the greatest presumption in its favor. The testimony of a sworn witness is not always to be depended upon, yet courts are obliged to rely on the presumption that witnesses will usually speak truth and not falsehood. Admissions and confessions are not always in accordance with the facts, but it is deemed safe to presume that men will not ordinarily state what is against their own interest. In short, absolute certainty can rarely be had by any evidence, and the best that can be done is to get evidence that has a presumption more or less strong in its favor, when judged in the light of the usual conduct and motives of men.

The admissibility of books of science, scholarship, and history also rests on the presumption of their accuracy. The numerous authorities respecting their admissibility, as shown by a note to *Union P. R. Co. v. Yates* (C. C. App.) 40 L. R. A. 553, 49 U. S. App. 241, establish the rule that works concerning what may be termed inexact sciences are not usually allowed as evidence, although there are courts which admit them. Of this class medical books are most often brought in question. While they are not admissible in evidence or allowed to be read to the jury, they have some use, as in testing the knowledge of experts on cross-examination. Law books constitute a somewhat

distinct class, and it is usually held to be in the discretion of the court to allow them to be read to the jury. But books which contain tables or compilations of demonstrable facts or conclusions of exact science are held to be admissible. These, when published to the world for the use of learned men, are presumably correct. Tables of the expectancy of life, logarithm tables, tide tables, almanacs and astronomical tables, are illustrations of this class. The line between exact and inexact sciences may not be perfectly defined, but the conclusion reached by mathematical computation has a kind of certainty that does not belong to a deduction in biology or physiology. The practical result is that courts deem the presumption sufficient to admit works of exact science, but do not usually admit any other scientific books.

The Lost Israel Found.

Among the unsolved problems of history, such as the identity of the man in the iron mask or of the one who struck Billy Patterson, none has put perpetual motion into more brains than the problem of the lost ten tribes of Israel. From the sure word of prophecy, original thinkers have traced those misplaced Israelites into almost every kindred and tribe on this terrestrial ball. Through all disguises those wandering Jews have been discovered as the Chinese, the Tartars, the Esquimaux, the Mexicans, the American Indians, and last of all as the Anglo-Saxons. This last conclusion has just been announced from the sacred desk by a preacher of the gospel, who refers for indubitable and double authority to the Bible and to Prof. Totten. Many prophetic utterances, carefully selected and judiciously marshaled, point to this conclusion; but etymology gives the clutching proof. It lies in the name itself. The word "Saxon," he says, is nothing less than a shorter form of "Isaac's son." Such discovery comes like a revelation. Why has no one noticed it before? There are other proofs equally cogent. Were the lost tribes not carried off to Babylon, and what is London but the Babylon of to-day? Were not the Jacobites English, and what is the name "Jacobites" but a motto of the sons of Jacob, a kind of *noli me tangere* warning to possible assailants that "Jacob-bites." Some indeed whose Judaistic learning is tinged with modern science will see in the word a survival of far earlier date, and regard the word "Jacobites" as a preadamite vocable first used

by some Simian ancestor who, if threatened by a foe, would show his teeth and chatter, "Jacob-bites." Indeed (though this may be *obiter*) this race name "Simian" and the name of Jacob's son Simeon are *idem sonans* with only a slight and unimportant difference of orthography which would not have been noticed in that early day or even as late as Shakspeare's time.

The theory gets strength from every side. Note the connection between the Israelitish worship of the golden calf and the American cult of the almighty dollar, gold standard. But the fitting climax to the truly remarkable sermon on this subject is a striking couplet from Lowell's "Biglow Papers" which the preacher strangely enough failed to quote. As the sacred record says, the kingdom of the Israelites was broken to pieces because "they would not hear, but hardened their necks," and so Lowell, in speaking of the stiff-necked Anglo-Saxons, similarly, but perhaps too colloquially, says,

"Thet Anglo-Saxondom idee's abreakin' 'em to pieces,
An' thet idee's that every man doos jest wut he d-n pleases."

The clergyman himself illustrates that "idee" by preaching this theory instead of the gospel.

Private Bills in Congress.

A serious stain on the honor of the United States government is made by the treatment of private claims in Congress.

Real tragedies might be written from the lives of men whose long pursuit of a congressional award started with faith in the nation's honor and ended with bitter sense of the nation's dishonor. If the claim were finally allowed the claimant may have already passed to another tribunal, where justice can be got without the services of a lobbyist.

The pernicious services of lobbyists are discussed temperately by Mr. Justice Swayne, writing the opinion of the court in *Burke v. Child*, 21 Wall. 441, 22 L. ed. 628, as follows: "A private bill is apt to attract little attention. It involves no great public interest and usually fails to excite much discussion. Not unfrequently the facts are whispered to those whose duty it is to investigate, vouched for by them, and the passage of the measure is thus secured. If the agent is truthful and conceals nothing, all is well. If he uses nefarious means with success, the springhead and the stream of legislation are polluted. . . . The wide-

spread suspicion which prevails, and charges openly made and hardly denied, lead to the conclusion that such events are not of rare occurrence."

A scandal has lately arisen in the matter of the claim of the Methodist Episcopal Church South against the government. Senators are reported as saying that they voted for the claim under the false assurance that no attorney was to have any commission upon it, and that all the money was to go for the benefit of needy preachers, widows, and orphans, when in fact an attorney had a contract for 35 per cent of the award, amounting to more than \$100,000. For the honor of the church, its bishops, as high-minded men, declare that if a congressional investigation shows that the award was due to misrepresentation, they will secure the return of the money to the government. But the honor of the government is even more involved than that of the church. If the award is just, why has the church been compelled to plead year after year for a generation before it could get justice? If the award was not justly due but has been made because of an expectation that the money would be used for charitable purposes, it is a clear case of defrauding the government.

The most damning charge that can be made against any government is that it denies justice to its people. In the matter of private claims against the United States no man can be sure, or even reasonably confident, of obtaining what is due him. Even if all congressmen are incorruptible, it still remains true that Congress, by reason of its bulk and consequent inertia, as well as the pressure of public business, is utterly unfit to act as a tribunal for the investigation and allowance of private claims. Assuming the absence of corruption, its allowance of claims is too much like the practice of the unjust judge who feared not God nor regarded man but granted relief only to avoid being wearied by the continual coming and persistence of the claimant. It is somewhat reckless to suppose that with such a system the deserving and honest claims are the ones that are usually successful. The total abolition of the practice of passing private bills to pay claims against the government is necessary if the government is to wipe out the scandal so mildly mentioned by Mr. Justice Swayne, and silence the biting accusation that it will not do justice on such claims even to its own citizens. Wise legislation can provide for fair and judicial investigation of any claim that Congress can properly allow.

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Among the New Decisions.

Aliens.

The constitutional provision against the ownership of lands by aliens in Washington is applied in *State, Winston, v. Hudson Land Co.*, 40 L. R. A. 480, to a lease of land for forty-nine years to an alien, and also to lands owned by a corporation when a majority of the capital stock comes into the hands of aliens.

Assumpsit.

A public officer receiving fees to which he is not entitled, from a party whom he knows to be ignorant of the law, without informing him that he is not bound to pay, is held, in *Marcotte v. Allen (Me.)* 40 L. R. A. 185, liable to an action for money had and received, on the ground that he received the money fraudulently.

Attorneys.

The resignation of an attorney without consent or privilege of the court is held, in *Re Thompson (Or.)* 40 L. R. A. 194, to be ineffectual to preclude his disbarment, when proceedings therefor are then pending.

Banks.

Payment of a check after the maker has been declared to be insane, and is so, is held, in *American Trust & B. Co. v. Boone (Ga.)* 40 L. R. A. 250, to be at the peril of the bank, although it does not know of the insanity of the drawer, and although the adjudication of insanity was made in another state.

Bills and Notes.

An indorsee of a negotiable note, who has made a written assignment thereof which is not indorsed on the note, in order to transfer it as collateral security, is held, in *Haug v. Riley (Ga.)* 40 L. R. A. 244, entitled to bring

an action upon it when the note is surrendered to him, although it is merely for the purpose of collection.

Carriers.

A carrier sending a carload of orange trees early in March from Louisiana to California by way of Denver, Colorado, and Ogden, Utah, without notifying the consignees or consignor and taking directions from them, is held, in *Pierce v. Southern P. Co. (Cal.)* 40 L. R. A. 350, liable for the loss of the trees by freezing, although its own route through New Mexico and Arizona was temporarily interrupted by storms and washouts.

The indorsement by a consignor of a bill of lading providing for delivery to his order is held, in *Chicago Packing & P. Co. v. Savannah, F. & W. R. Co. (Ga.)* 40 L. R. A. 367, to make the indorsee a consignee; and delivery to him is justifiable, although he does not surrender the bill of lading in accordance with a stipulation thereon requiring its surrender before delivery.

A state statute requiring intersecting railroads to put in a connecting switch to facilitate the interchange of cars is held, in *Jacobson v. Wisconsin, M. & P. R. Co. (Minn.)* 40 L. R. A. 389, to be valid, although the business to be exchanged is interstate commerce.

Case.

Interference with ownership of land by advertising and selling it under a fraudulent mortgage and notifying the tenants not to pay rent to the owner is held, in *Gore v. Condon (Md.)* 40 L. R. A. 382, to constitute an actionable wrong so far as it damages the interest in the real property, but not on account of the disgrace and disrepute into which the owner is thereby brought.

Conflict of Laws.

The law of the testator's domicile is held, in *Lowndes v. Cooch (Md.)* 40 L. R. A. 380, to govern the lapsing of a legacy of stock in a bank of another state in which the legatee resides, although a statute of the latter state, if applicable, would prevent the lapsing.

Constitutional Law.

A statute limiting the rights of a citizen to contract with reference to his property is held, in *Dennis v. Moses (Wash.)* 40 L. R. A. 302,

to be valid only when it tends to promote the public good in some way. Otherwise it is an unwarranted interference with his rights. This case denies the validity of a statute which attempted to limit the right to enforce a debt secured by mortgage to the property mortgaged, whether realty or chattels.

Coroners.

A verdict of a coroner's jury is held, in *Smalls v. State* (Ga.) 40 L. R. A. 369, to be advisory merely, and not binding as a judgment or possessing any probative effect as evidence in a homicide case, and therefore not subject to be reviewed, set aside, or quashed in the superior court.

Corporations.

The right of a stockholder to set up the illegality of the scheme of the corporation to defeat his liability on a subscription to stock is denied in *Cardwell v. Kelly* (Va.) 40 L. R. A. 240, where the illegality did not appear on the face of the contract of subscription or the prospectus therein referred to, and creditors had relied on the subscriptions.

Counties.

The duty of a county to pay members of a sheriff's *posse comitatus* is denied in *Sears v. Gallatin County* (Mont.) 40 L. R. A. 405, in the absence of any statutory provision for their compensation.

Eminent Domain.

The reasonable use of the streets of a city for the equipment of a telephone system, including poles and wires, is held, in *Magee v. Overshiner* (Ind.) 40 L. R. A. 370, to be a lawful use, and not a new and additional servitude for which the abutting owner can claim compensation.

Evidence.

Evidence of the killing of a woman by a locomotive or other part of a train while she was sitting or lying on the track at night between 12 o'clock and daylight is held, in *Parish v. Western & A. R. Co.* (Ga.) 40 L. R. A. 364, to establish, as a conclusion of law, that she was guilty of negligence which will preclude liability of the railroad company.

Exhibitions.

The liability of a street-railway company to a spectator for injury by something that flew from a target hit by a bullet at an exhibition of marksmanship given by an independent contractor employed by it is sustained in *Thompson v. Lowell, L. & H. St. R. Co.* (Mass.) 40 L. R. A. 345, where the spectator had come to the place on one of the street cars and was at the place provided for spectators.

Fences.

A line fence maliciously erected so high as to cut off the light and air from the windows of a neighbor's house is held, in *Letts v. Kessler* (Ohio) 40 L. R. A. 177, to be within the exercise of a legal right.

Fire.

The union of a fire for which no responsible cause can be ascertained, with one which was due to the negligence of a known person, is held, in *Cook v. Minneapolis, St. P. & S. Ste. M. R. Co.* (Wis.) 40 L. R. A. 457, to preclude any recovery against the latter, where it is found that either fire alone would have been sufficient to cause the damage.

Food.

The mixing or mingling of articles of food which are wholesome and nutritious, and the sale thereof, are held, in *Dorsey v. State* (Tex.) 40 L. R. A. 201, to be a lawful act which the state cannot make criminal.

Garnishment.

One garnished for a debt due a nonresident creditor is held, in *Virginia F. & M. Ins. Co. v. New York Carousal Mfg. Co.* (Va.) 40 L. R. A. 237, to make a good defense by showing that, notwithstanding his plea of the pendency of those proceedings, he had been subjected to judgment for the debt in a court having jurisdiction at the creditor's domicile, and had been obliged to pay it.

Highways.

The right of a city to a judgment of indemnity against a landowner for injuries caused by his negligence in constructing a sidewalk is denied in *Wilhelm v. Defiance* (Ohio) 40

L. R. A. 294, as it was the right of the city to construct the walk itself, and assess the costs thereof on the owner.

Injury by stepping into a coal hole just beyond the street line, where the space was paved like the sidewalk, was held to give no right of action against the landowner, in *Lorenzo v. Wirth* (Mass.) 40 L. R. A. 347, although the party injured was a foreign woman ignorant of the custom of delivering coal through such holes, and did not see the coal hole, when the accident happened after dark, but while employees of a coal dealer were engaged in putting the coal into the hole.

Husband and Wife.

The matrimonial domicil of a wife who is justified by her husband's cruelty in leaving him is held, in *Atherton v. Atherton* (N. Y.) 40 L. R. A. 291, to be changed by her removal to another state, so as to prevent jurisdiction over her on constructive service in a divorce suit in the state where the husband resides.

The marriage in another state where it is valid, of a divorced person incapable of remarrying by the law of his domicil, is held, in *State v. Shattuck* (Vt.) 40 L. R. A. 428, to be valid at his domicil, unless the statute expressly provides to the contrary, although he went outside the state for the express purpose of evading the law, and immediately returned.

Hypnotism.

The hypnotism of an accused person is held, in *People v. Ebanks* (Cal.) 40 L. R. A. 269, insufficient to render evidence of statements made by him while under the influence admissible in his favor at his trial.

Incompetent Persons.

An insane delusion of an aged woman as to the superhuman powers of a man much younger than herself, and whose character for morality was notoriously the opposite of her own, is held, in *Orchardson v. Cofield* (Ill.) 40 L. R. A. 256, to render her incapable of contracting a valid marriage with him or making a will in his favor.

Insurance.

A corporation having capital stock in which many members do not share, and conducting business for the pecuniary benefit of its stock-

holders, is held, in *International Fraternal Alliance v. State* (Md.) 40 L. R. A. 187, to be incapable of issuing fraternal beneficiary certificates under Md. Code, § 143e, which authorizes such business by companies acting for the sole benefit of their members and beneficiaries, and not for profit.

Insurance on the assessment plan, though not authorized to be done by stock companies in Ohio, is held, in *State, National Life Assn., v. Matthews* (Ohio) 40 L. R. A. 418, to be a business for which corporations of other states may be licensed if authorized to do such business by the laws of the state which created them. But such business must be for the sole benefit of the policy holders and the revenue principally derived from *post mortem* assessments for specific losses.

A policy on furniture as a whole is held entirely void in *Dumas v. Northwestern Nat. Ins. Co.* (D. C.) 40 L. R. A. 358, for breach of a condition as to title and encumbrance on part of the property, and false swearing respecting them, where there is a provision that "this entire policy shall be void" in various contingencies, including these.

The lack of an absolute unencumbered title to the property insured by a policy declaring that it shall be of no validity unless the insured has an unconditional, unencumbered title, is held, in *Phenix Ins. Co. v. Fuller* (Neb.) 40 L. R. A. 408, to be no defense to the insurer if the insured has an insurable interest and the insurer accepts and retains the premium.

Voluntary exposure to unnecessary danger is held, in *Fidelity & C. Co. v. Chambers* (Va.) 40 L. R. A. 482, not to be shown by sitting on a bag on the railroad track at a highway crossing, without knowing that a train was due, and after being warned of the train and starting away, turning back to get the bag.

Hunting for game with a loaded gun is held, in *Cornwell v. Fraternal Acci. Asso.* (N. D.) 40 L. R. A. 437, not to constitute a voluntary exposure to unnecessary danger.

Attempting to drive a bull from a calf pasture without reason to believe that it is dangerous to do so is held, in *Johnson v. London Guarantee & Acci. Co.* (Mich.) 40 L. R. A. 440, not to constitute voluntary exposure to unnecessary danger.

The use of a buzz-saw by a cashier to saw off blocks from a board for his own use is held, in *Hess v. Preferred Masonic Mut. Acci. Asso.* (Mich.) 40 L. R. A. 414, not to constitute an exposure outside of his preferred occupation.

Voluntary exposure to unnecessary danger within the meaning of an accident policy is held, in *United States Mut. Acci. Asso. v. Hubbell* (Ohio) 40 L. R. A. 453, to mean danger of a substantial character known to the assured, who purposely and consciously exposes himself thereto, intending to assume the risk. An attempt of a traveling salesman to cross a slough in a road, thinking there is no danger, is held not to constitute such exposure.

Judgment.

A judgment to constitute a lien from the time of rendition is held, in *Callanan v. Votruba* (Iowa) 40 L. R. A. 375, to be rendered only when entered on the record of the court, and not when merely signed and indorsed "Filed."

Landlord and Tenant.

The lessor of a pulp mill in which there is a digester which is not safe is held, in *Whitmore v. Orono Pulp & P. Co.* (Me.) 40 L. R. A. 377, not to be chargeable with the duty toward the lessee's servants of making an examination to discover the safety of such digester.

Master and Servant.

An employer who took an injured employee to a hospital and agreed to pay for his treatment is held, in *St. Barnabas Hospital v. Minneapolis International Electric Co.* (Minn.) 40 L. R. A. 388, to have no right to cancel his engagement for the care of the servant until the latter can be removed without serious danger to life or health.

Screwing down the windows of a factory so that fire escapes can be reached only by breaking the windows, and forbidding them to be opened, is held, in *Huda v. American Glucose Co.* (N. Y.) 40 L. R. A. 411, to create no liability on the part of the employer to the workmen under a statute requiring fire escapes to be furnished, where the business requires the windows to be kept closed, and they are so light as to be easily broken if there is not time to unscrew them in case of fire.

Mines.

Petroleum oil and natural gas are held, in *Detler v. Holland* (Ohio) 40 L. R. A. 266, not to be conveyed by a conveyance of all the coal of every variety, "and all the iron ore,

fire clay, and other valuable minerals," with the right to use the surface of the land, as may be necessary for shafts, railroads, etc., to facilitate the mining and removal of the coal and other minerals.

Money.

A dollar bill from the upper left-hand corner of which a piece an inch and a half by an inch and a quarter has been torn, is held, in *North Hudson County R. Co. v. Anderson* (N. J.) 40 L. R. A. 410, to be too much mutilated to constitute a legal tender for car fare.

Municipal Corporations.

Prosecution under a municipal ordinance is held, in *Ex parte Fagg* (Tex.) 40 L. R. A. 212, to be only quasi criminal whatever the form of the procedure, and it is held that an ordinance cannot make it an offense against the city to do what is already an offense against the state under a statute and triable only in a court of record, where the Constitution requires all prosecutions to be in the name of the state and by the authority of the state.

Negligence.

Leaving a platform car with no machinery about it, or any brake, on a street-railway side track where the united strength of children can move it, is held, in *Kaumeier v. City Electric R. Co.* (Mich.) 40 L. R. A. 385, not to render the company liable for injury to a child playing with it.

Parks.

A schoolhouse on a lot dedicated "only for public use as an ornamental park" is held, in *Rowzee v. Pierce* (Miss.) 40 L. R. A. 402, to be a wrongful use of the property, which may be prevented by injunction in favor of the original donors of the property.

Pleading.

Allegations that a child less than two years old was capable of rendering, and did render, valuable services to the parents by doing errands and performing services about the house, such as bringing fuel and caring for a younger child, are held, in *Southern R. Co. v. Covenia* (Ga.) 40 L. R. A. 253, to be insufficient to state a cause of action for the loss of the

child's services, as the court will take judicial cognizance of the fact that such a child is incapable of rendering valuable services.

Railroads.

No acquisition of an easement for a railroad right of way is held, in *Narron v. Wilmington & W. R. Co. (N. C.)* 40 L. R. A. 415, to result from occupation under color of title, when taken by eminent domain and the owner has given no consent thereto.

Blowing a locomotive whistle loudly several times under a bridge over which vehicles are constantly passing is held, in *Mitchell v. Nashville, C. & St. L. R. Co. (Tenn.)* 40 L. R. A. 426, to be so unnatural and reckless an act as to create a liability for resulting damages.

Reward.

An offer of a reward for the arrest of a murderer is held, in *Lees v. Colgan (Cal.)* 40 L. R. A. 355, not to extend to an arrest by an officer whose duty it is to make it, and this applies to an arrest by a policeman without a warrant for a crime committed in another county.

Schools.

A school director who has a personal enmity toward a superintendent, and is the prime mover in the prosecution, is held, in *State, Barnard, v. Board of Education (Wash.)* 40 L. R. A. 317, disqualified to sit as a member of the board to try the charges, when he has declared that he shall vote for conviction, and there is no appeal from the decision of the board.

Statutes.

The examination of legislative journals is held, in *State, Cheyenne, v. Swan (Wyo.)* 40 L. R. A. 195, to be the duty of the court when there is a dispute as to the enactment of a statute which is published, and the Constitution requires the journal to be kept, and that no bill shall become a law without a vote by ayes and noes on the final passage entered on the journal.

Syndicate.

Promoters of a syndicate are held, in *Baltimore Trust & G. Co. v. Hambleton (Md.)* 40 L. R. A. 216, to owe toward persons who co-operate in their enterprise, not only the duty

to abstain from stating what is not true, but not to omit to state circumstances which may affect the advantages held out by them as inducements.

A purchase of lands on behalf of a syndicate, by real estate agents who are members of it and also act as agents of the vendor, is held, in *Ferguson v. Gooch (Va.)* 40 L. R. A. 234, unenforceable against the other members of the syndicate.

Telegraphs.

The delivery of a telegram to the wife of the addressee when he is absent from town is held, in *Western U. Teleg. Co. v. Mitchell (Tex.)* 40 L. R. A. 209, insufficient, as matter of law, to satisfy the obligation of the company, but its duty in this respect is a question of fact.

Waters.

Flagrant disregard by a water company of its obligation to furnish clear and wholesome water, and the furnishing of water which endangers the health and lives of the people, notwithstanding remonstrances, are held, in *Palestine Water & P. Co. v. Palestine (Tex.)* 40 L. R. A. 203, to be sufficient grounds for forfeiting the franchise.

Title to a proportionate share of land under water, depending on title to the upland, is held, in *Gratz v. Land & River Imp. Co. (C. C. App.)* 40 L. R. A. 393, to pass by a deed of a certain number of undivided acres out of the tract of upland bordering on the water. With this case is a review of the authorities on the separation of riparian rights from upland.

Wills.

A will giving all testator's property to a woman whom he appoints as one of his executors and afterwards marries is held, in *Ingersoll v. Hopkins (Mass.)* 40 L. R. A. 191, not to show on its face that it was made in contemplation of marriage so as to prevent revocation by the marriage.

Witnesses.

A constitutional right of an accused person to compulsory process for witnesses is held, in *Henderson v. Evans (S. C.)* 40 L. R. A. 426, insufficient to give the witnesses a right to claim fees from the county.

Recent Articles in Law Journals and Reviews.

"Parol Evidence to Add Covenants, Conditions, or Reservations to Deeds."—47 Central Law Journal, 3.

"Mechanics' Liens; Consent to Erection; When Implied." 47 Central Law Journal, 10.

"Japanese Causes Célèbres." III.—10 Green Bag, 287.

"The Animal Kingdom in Court."—10 Green Bag, 290.

"The Great Seal." Part II.—10 Green Bag, 293.

"William Shakespeare, Attorney at Law." I.—10 Green Bag, 303.

"The Theodosian Code."—10 Green Bag, 309.

"Ancient Customs of the City of London."—10 Green Bag, 312.

"Contingent Remainders and the Rule against Perpetuities."—14 Law Quarterly Review, 234.

"Following Property in the Hands of an Agent."—14 Law Quarterly Review, 272.

"The Law of Quasi-Contract."—14 Law Quarterly Review, 253.

"English Law before the Norman Conquest."—14 Law Quarterly Review, 291.

"The Evidence of Interested Witnesses in Negligence Cases."—37 American Law Register, N. S., 401.

"The Want of Consideration as a Defense to Negotiable Paper."—37 American Law Register, N. S., 337.

"The Rights of Stockholders with Reference to the Management of a Corporation."—37 American Law Register, N. S., 353, 411.

"Interference with Contract Relations."—37 American Law Register, N. S., 275.

"Partnership Property."—37 American Law Register, N. S., 295.

"Rules against Perpetuities in Indiana." (Part I.)—1 Indiana Law Journal, 220.

"Surprise as Ground for a New Trial."—47 Central Law Journal, 30.

"Novation."—47 Central Law Journal, 34.

"Nature of Presumption Arising from Recent Possession of Stolen Goods."—18 Law Register, 448.

"Attempts to Commit Crime."—19 Australian Law Times, 172.

"Landlord's Liability for Injuries to Strangers on Demised Premises."—105 Law Times, 148.

"Retrospective Liability of Retired Trustees."—105 Law Times, 149.

"Inebriety and Its 'Cures' among the Ancients."—20 Journal of Inebriety, 125.

"Legal Consequences of Inebriety."—20 Journal of Inebriety, 142.

"Oral Arguments in Appellate Court."—1 Wisconsin Bench & Bar, 262.

"Loss of Profits as Damages."—5 New York Annotated Cases, 170.

"Taxation of Foreign Corporations Doing Business in This State."—5 New York Annotated Cases, 206.

"Fraud in General Assignments by Withholding Assets, etc."—5 New York Annotated Cases, 231.

"The Law of Liability Insurance."—6 American Lawyer, 247.

"Annuling Marriage for Fraud."—47 Central Law Journal, 90.

"Disqualification of Judge for Interest."—47 Central Law Journal, 94.

"The Study of the Common Law."—37 American Law Register, N. S., 465.

"Criminal Anthropology in Italy." I.—10 Green Bag, 342.

"Effect on the Exemption Rights of the Encroachment of a Town or City upon a Rural Homestead."—47 Central Law Journal, 72.

"Failure to Guard Pond."—47 Central Law Journal, 75.

"The Contracts of Municipal Corporations."—18 Canadian Law Times, 145.

"Malice in Law and in Fact."—18 Canadian Law Times, 157.

"What Constitutes 'A Breaking' in Burglary."—47 Central Law Journal, 114.

"Life Insurance; Cancellation of Policy; Remedy of Insured; Recovery of Premiums Paid."—47 Central Law Journal, 116.

"Questions of International Law Involved in the Spanish War."—32 American Law Review, 481.

"The Power of the State to Regulate Prices and Charges."—32 American Law Review, 501.

"The Right of Employers to Carry on Their Business with Extra-Hazardous Appliances."—32 American Law Review, 515.

"The Church and State in American Law."—32 American Law Review, 529.

"Who are Citizens of the United States? Wong Kim Ark Case.—Interpretation of Citizenship Clause of Fourteenth Amendment."—32 American Law Review, 554.

"The Legal Capacity of Married Women in England."—32 American Law Review, 563.

"Fraud and the Marriage Contract."—32 American Law Review, 568.

New Books.

"Courts and Judges of New York City." By A. Oakey Hall. (Moses King, New York.) 1 Vol. Illustrated, \$5.

"Rust's Penal and Criminal Code of New York for 1898." (S. S. Peloubet, New York.) 1 Vol. \$3.50.

"Michael's United States Laws for Navy, Marine Corps, etc." (Washington Law Book Co., Washington, D. C.) 1 Vol. Cloth, \$3.50. Sheep, \$4.

"Bankrupt Law of 1898." Compiled by Nathan Frank. (F. H. Thomas Law Book Co., St. Louis.) 1 Vol. Cloth, \$1.50.

"Snyder's Notary's Manual." Enlarged Edition. (Baker, Voorhis & Co., New York.) 1 Vol. \$1.50.

"Law of Debtor and Creditor Relative to Situs of Debt." By Rufus Waples. (T. H. Flood & Co., Chicago, Ill.) 1 Vol. \$3.50.

"Bills, Notes, and Checks." By C. G. Tiedeman. (F. H. Thomas Law Book Co., St. Louis, Mo.) 1 Vol. \$4.50.

"Select Cases on Real Property." By C. G. Tiedeman. (F. H. Thomas Law Book Co., St. Louis, Mo.) 1 Vol. \$2.50.

"New York Negligence Cases, Classified." By T. F. Hamilton. (Remick, Schilling, & Co., New York.) 1 Vol. \$6.50.

"Supplement (Vol. 8) to Danforth & Wickes' Digest of New York Court of Appeals Reports." By Amasa J. Parker. (L. C. P. Co., Rochester, N. Y.) \$5.50. 8 Vols. \$15.

"Uniform System of Bankruptcy under the Act of 1898." With Rules and Forms. By T. W. Tallmadge & D. W. Wood. (Law Reporter Co., Washington, D. C.) 1 Vol. Cloth, \$2. Sheep, \$2.50.

"New Brunswick Equity Cases 1876-98." By W. H. Trueman. (The Carswell Co., Ltd., Toronto, Ont.) 1 Vol. \$7.

The Humorous Side.

FOR WHOM DO YOU APPEAR?—A question usually asked an expert witness by an Irish judge (the late Mr. Justice Keogh), says the *London Law Times*, was, "For whom, sir, do you appear? For the plaintiff or for the defendant?"

INSPIRATION FOR LITIGANTS.—An Arkansas attorney has at the top of his business card the following scriptural quotation: "If

Demetrius and the craftsmen which are with him have a matter against any man the law is open and there are deputies; let them implead one another." Acts XIX.—38.

TRACED TO THEIR BIRTH.—In an address to a jury a few days since a Mr. Carson, Q. C., is said by the "*London Law Journal*" to have used this expressive language: "Gentlemen, the charges against my clients are only mare's nests which have been traced to their birth, and are found to have had neither origin nor existence."

"IF ANYTHING COULD."—An English legal journal, publishing the expressions of gratitude of a bereaved widow and children, says, "If anything could console" her and her family for their overwhelming and irreparable loss, it would be the honor paid to his memory.

NOT LAW BOOKS.—A Missouri judge begins a recent opinion as follows: "'Delenda est Carthago.' Error, unrepentant, must be destroyed. Gentle reader, if you have ever chanced to wander through that wilderness of undigested volumes which Judge Leonard on one occasion said were not law books, but only Missouri Reports, you mayhap have encountered the case of *Hickman v. Green*, 123 Mo. 165, 22 S. W. 455, and 27 S. W. 440. If not, it shall be my pleasing task now to unfold to you the prominent points and salient characteristics of that cause *celebre*."

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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

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VOL. 5

SEPTEMBER, 1898.

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A. P. McCormick.

Among the judges of the United States circuit courts of appeals who have had long and distinguished service on the bench is Andrew Phelps McCormick, of the fifth circuit. He was born December 18, 1832, on a farm near Columbia, then in the Mexican state of Coahuila and Texas, now in Brazoria county, Texas. During his boyhood he attended school in Texas, then went to Danville, Ky., and entered the freshman class in Center College, where he took the full classical course, and received the first honor in the class of 1854. He studied law with Judge Jas. H. Bell, in Brazoria, Texas, whose partner he became when admitted to the bar in December, 1855.

He opposed secession until it became certain that Texas would unite in the movement, but then declined to be a factionist, and cordially took part with his fellow citizens. He entered the Confederate army in April, 1862, remained in the regular service one year, and later was in the field as a member of the state troops. In September, 1865, he was appointed by Provisional Governor A. J. Hamilton chief justice of Brazoria county. A few months later he was elected by the people of Brazoria and Galveston counties a delegate to the constitutional convention called by Governor Hamilton. In 1868 he was elected to the constitutional convention called to carry into effect the recon-

struction measures of Congress. In October, 1871, he was appointed by Governor E. J. Davis state district judge for the district composed of Brazoria and Galveston counties. Up to this time he had continued in active practice at the bar, his service in the army not having taken him away from the district of his residence. He remained judge until April 17, 1876, and on the next day took his seat in the state senate for the district composed of the counties of Galveston, Brazoria, and Matagorda. He resumed his practice at the bar, and in the winter of 1878 was appointed United States district attorney for the eastern district of Texas, but as his commission arrived while the senate was in session, he was allowed by President Hayes to defer qualifying as district attorney until the senate adjourned, and before its adjournment was nominated by President Hayes for judge of the United States district court for the newly created northern district of Texas. His appointment was confirmed by the senate April 10, 1879, and in January, 1892, he was nominated by President Harrison United States circuit judge for the fifth judicial circuit, and his nomination was confirmed on March 17, 1892, since which time he has been a member of the circuit court of appeals, fifth circuit, composed of the circuit justice, the senior judge, Don A. Pardee, and himself. Nearly twenty years' service in the Federal courts of that circuit, with his previous judicial service in the state court, has given Judge McCormick a wide reputation.

He was married on September 8, 1859, to Mary Copes, of Brazoria county, Texas, who died January 12, 1870, leaving six children, two sons and four daughters, all of whom are still living. On March 1, 1871, he married Lula Bell. They have five children, one son and four daughters. His family residence is Oak Cliff, Dallas county, Texas.

A Peril of Cashing Drafts with Bills of Lading Attached.

A decision that will startle commercial circles was rendered in *Landa v. Lattin* (Tex. Civ. App.) 45 S. W. 48. That case held that a bank which cashed a draft drawn by a consignor on a consignee of wheat, with a bill of lading attached, and collected the draft before the consignee had opportunity to inspect the wheat, was liable for a breach of warranty as to the quality of the wheat. The bank was held to be a purchaser of the wheat and therefore a successor to the liabilities as well as the rights of the consignor. The court said: "It could not, by delivery of the wheat and electing to reap the benefits of that contract, and demanding the payment of the sum called for, and receiving the same, take the position that it was not a party to the contract between the [consignee] and [consignor], and that in acquiring title to the wheat it became the purchaser thereof unaffected by the burdens of that contract."

The theory that a bank taking a bill of lading with a draft which it cashes succeeds to all the rights of the shipper, and to no greater rights than he had, is not new. But this seems to be the first case to hold that such bank succeeds also to the shipper's liability on a warranty of the goods. In the nature of the case, the purchase of the bill of lading is subject to the obligation to surrender the title to the consignee on payment of the agreed price. In essence, as in form, it seems to be not so much a purchase of the goods, as a purchase of the seller's right to the purchase price, with the legal title to the goods as security therefor. The bank's rights are necessarily subject to all defenses which the consignee may have against the consignor because the claim which it buys is not negotiable. But its liability as a substituted party to the warranty of the consignor in the original contract is a result that was doubtless not contemplated by either party. Such liability can be imposed on the bank only on the ground that it assumed that liability by its contract. This it does not do expressly. And if it was not contemplated or generally recognized as an incident of the transaction, it is not easy to see how such an assumption of the seller's warranty can be implied. Something more than the mere receipt of the purchase price and surrender of title to the property seems necessary to create a liability of the bank to the consignee, unless we are to have the doctrine that covenants run

with personal property, or that a purchase of personal property in itself subjects the purchaser to the contractual obligations of his vendor.

Riparian Owner's Right of Access.

The increase in the value of riparian rights resulting from denser population and larger commerce has given the law of those rights an importance not previously recognized. Unfortunately, the law concerning them is still far from certain and harmonious. The general law, as shown in the note to *State, Denny, v. Bridges* (Wash.) 40 L. R. A. 593, is, both in this country and England, that a riparian owner has a right of access to navigable water. In England, Ireland, and Canada this right is upheld even as against the public, and compensation is required when such access is cut off by public works, whether in improvement of navigation or otherwise. Such a right has been usually supposed to be as certain and as well assured as any other right. Yet in this country there are some decisions of the highest authority to the effect that the right of access may be entirely destroyed without compensation to the owner when this is done for the improvement of navigation. This is the effect of the late case of *Sage v. New York*, 154 N. Y. 61, 88 L. R. A. 606. The same doctrine in effect obtains in Wisconsin, where the riparian owner is deemed to hold his right by implied public license, the exercise of which may be prohibited by public law in aid of the public use, and which necessarily gives way to public measures in aid of navigation. The Supreme Court of the United States has also affirmed this doctrine in *Gibson v. United States*, 166 U. S. 269, 41 L. ed. 996, where it is held that the substantial destruction of a riparian owner's access to a navigable river by the building of a government dike in the river, which kept the water in the main channel and from such owner's landing, was not a taking of property, but only an exercise of a servitude to which the property was always subject. These cases make a great limitation on the right of a riparian owner which may even amount to its substantial destruction. It cannot be said that this limitation has been recognized in most states, although in most of them it has not been expressly considered. It seems more just if a riparian owner's right of access is cut off, whether in aid of navigation or for any other public purpose, that compensation should be paid him. In this, as in all other

cases when the interests of a private person are destroyed or damaged for the benefit of the public, it is more just that the public should pay for the damage done him than that a private person should suffer for the public benefit.

Right to Erect Wharves.

Closely connected with the right of access to navigable water is the right of a riparian owner to construct wharves. It is clearly for the public interest, as well as for that of the private owner, that he should have the right to build wharves for the convenience and extension of commerce, provided that he does not thereby interfere with the public right of navigation. In the late case of *Madison v. Mayers* (Wis.) 40 L. R. A. 685, it is held that the owner of land abutting on a lake the title to which is in the state has the right to build wharves and piers in the aid of navigation, without obstructing it, far enough out through shoal water to reach water actually navigable for such boats as are or may be appropriately used in the lake. The annotation shows that this decision is consistent with most of the authorities. All the courts agree that the obstruction cannot be extended beyond the point of navigability, or be allowed, if it is in fact a nuisance; but there are some courts which absolutely deny the right of the riparian owner to build wharves beyond the line of private ownership, unless he has acquired the right to do so from the state. While the right is quite generally upheld, it is also held to be subject to such public regulation as the state may prescribe, one form of which is the establishment of harbor lines beyond which a wharf may not extend. While commerce is fostered by upholding the private right to construct wharves, it would be seriously endangered if the right was not subject to public regulation, and such regulation cannot be deemed to be an unjust infringement of the private right.

Taxation of Intoxicants.

"The Voice" insists that "in the case of the liquor traffic taxation is a privilege" because the revenue therefrom "becomes an added bulwark to defend it from the public conscience and an added fetter to bind it like a millstone upon the already burdened liquor neck of our civilization." Doubtless the rev-

enue from liquor taxes does have a tendency to make some people more tolerant of the evils growing out of the use of intoxicants. To the extent of that influence such a tax is objectionable. If the revenue therefrom prevents such legislation as the public welfare demands, then that revenue is evil and ought to be abolished. "The Voice" may believe that such is the case and that except for this revenue the people would declare for prohibition. But probably most people think otherwise. The revenue from the business cannot greatly bias an intelligent taxpayer because it is woefully insufficient to pay the taxes which result from the business. While it does have some tendency to bias people, it probably does not materially hinder legislation for the regulation or repression of the traffic. If intoxicating liquors are to be sold there are not many people except the dealers therein who wish to take the burden of taxation from them and put it upon the other articles of common use. As between a restricted, regulated, and taxed liquor traffic, and one that is absolutely unrestricted and untaxed, the people will have no hesitation in deciding.

The exact meaning of "The Voice" is not altogether certain. In declaring that in case of the liquor traffic taxation is a privilege, it doubtless has reference to the above-mentioned tendency of such tax to make men tolerant of the business. To that extent its argument has a sound basis, and the only question is as to its weight. But its language seems to mean more than this. In saying that such a tax is the "price of slavery and death," "The Voice" seems to say that the government sells a permission to do a business that was not lawful until made so by statute. That is another form of the oft-repeated, but untrue, assertion that the sale of intoxicating liquors has been "legalized." As a public teacher "The Voice" ought to know that such a statement is utterly false.

Distrust of the People.

Distrust of the people is distrust of God in a country where the people rule. *Vox populi, vox dei*, is not an empty phrase, although it is often falsified by hasty or passionate popular clamor. But the truth that is in it can be found in the calm ultimate judgment of the people, which supports and must support every step of progress and every advance of right. A concealed or latent fear of the people is at

the bottom of much of the thinking and many of the plans of those who discuss our public evils and their remedies. The timid and short-sighted would hamper self-government to prevent misgovernment. Nearly every remedy proposed in recent years for political bossism, corruption, or oppression, has been in this direction. The mistake in all these is fundamental. To make the people at large feel their own responsibility for good government is the first and greatest requisite.

For vicious legislation, although not made by the people directly but by their representatives, the people are responsible, because of their responsibility for the fitness or unfitness of those whom they elect to represent them. For fear of bad legislation there has been a marked tendency in recent years to curtail the power of the legislatures. The courts have condemned bad statutes as unconstitutional when they involved purely legislative questions of public policy, on which courts have no legitimate right to interfere. If the legislature is wrong on such matters, the remedy is a better legislature. The people themselves must cure foolish or evil legislation, when it is within the range of legislative power and not prohibited by their Constitution. But constitutional prohibitions have multiplied. The tendency has been to restrain legislative action by restrictions increasingly minute which themselves constitute legislation rather than principles to govern legislation. This seems like a confession that the legislatures cannot be trusted, and there has been much cause for that feeling. Yet that is another way of confessing that the people are unfit for self-government.

In respect to cities, the distrust of the fitness of the people has been especially strong. Indeed, it has not been uncommon to hear the most pessimistic ideas declared as to the incapacity of cities for home rule. State legislatures, assuming a protectorate over cities, often take away their right to regulate local affairs and choose local officers. This, even when done in good faith for the welfare of the city, and not for mere partisan advantage, is a serious and pernicious mistake. Since we are rapidly becoming a nation of cities, a confession that the cities are unfit for self-government is a confession that the government of the people must soon prove a failure in this country.

Ultra conservatism in all matters of public interest is also greatly strengthened by this same distrust of the wisdom or purposes of the

people. Wrongs are tolerated by some men because they fear that an attempt to cure them will not stop with just measures, but will run into injustice and oppression. Because reformers sometimes have unjust schemes timid and short-sighted persons take refuge in stolid opposition to every reform movement.

The theory of a free government is that every man is a statesman. The modern tendency has been, and still is, to regard the mass of free men as wards, who must be protected against their own folly. It is the same fatal blunder that fatuous parents make when, to shield their sons and daughters from making any wrong decisions, they keep them babies in judgment by deciding everything for them. A government of the people cannot be at the same time a government in which the people are under a protectorate. The responsibility must be upon them. Their mistakes, if they make them, must be left for them to remedy after they have been taught by experience.

There is health in the bones of this government by the people. It shall not perish from the earth. It is yet far from realizing its magnificent ideal of a self-governing nation in which every citizen is fit for personal and national self-government. But it has no greater danger than a tendency to lessen the personal responsibility of the common citizen. Every public measure that is based on a distrust of the people is vicious in its ultimate effect. Every genuine remedy for political wrong and all lasting progress must be based on a confidence in their wisdom and justice. Men who are large enough and wise enough for leadership are not afraid to trust them. Our greatest statesmen have had the largest faith in them, and that faith has been justified in every great crisis.

Prize Thesis.

The prize for the best thesis on "The Commercial Clause of the Federal Constitution as Affected by the Police Power of the States," which was offered to the Northwestern University Law School, and consisted of a set of the "Lawyers' Reports, Annotated," was taken by Mr. F. J. R. Mitchell, whose office is now 1132 Marquette Block, Chicago. His thesis analyzes the decisions, and states the development and present condition of the subject with admirable clearness. It is exceedingly creditable to him and to the law school in which he was trained.

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Right of owner of upland to access to navigable water:—The English rule; the rule in Ireland; the rule in Canada; general expressions favoring the right of the shore owner in this country; the rule in Massachusetts; cases holding the opposite rule (New York, New Jersey, Washington, and Oregon); the rule of the Federal courts; other decisions denying the riparian owner's right; the effect of statutes; access cut off by railroad; right as against private individual; estoppel by grant; special reasons for refusing relief; right as against improvement of navigation; summary

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Wharves; right to erect:—The rule in England; the rule in this country; cases recognizing the right of the riparian owner; rule where title extends to thread of stream; effect of custom; statutory right; rights as against individuals; right under grant or license; to low-water mark; prescriptive right; the Federal cases; cases denying the right; statutory restrictions; wharves beneficial; regulation of right; harbor lines; right of municipal corporation to build; right of city to regulate; right of New York city; abatement of wharf; effect of street along shore; private contracts; direction of wharf; rights of state and general government; effect of constructing in front of private property; right in wharf which has been erected; log pier; ejectment for pier

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Wills. See MASSES.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for \$1.

Among the New Decisions.

Animals.

The property rights in dogs are sustained in *Graham v. Smith* (Ga.) 40 L. R. A. 503, by holding that the owner of a dog can maintain trover for its recovery in case of its wrongful conversion. That a dog may be the subject of larceny is also decided in *Hamby v. Samson* (Iowa) 40 L. R. A. 508, under a statute making it a crime to steal "chattels."

Assignment.

An assignment of wages for the period of one year, by one working under a contract, whether by the day, the week, or otherwise, is held valid in *Dolan v. Hughes* (R. I.) 40 L. R. A. 735, under a statute allowing the assignment of future earnings.

Awnings.

An awning which makes a permanent encroachment on a street is held, in *Hibbard v. B. & Co. v. Chicago* (Ill.) 40 L. R. A. 621, to constitute a purpresture; and an order of the city council permitting it is held to be only a license which can be revoked at any time.

Bees.

Finding a bee tree on the land of another is held, in *State v. Repp* (Iowa) 40 L. R. A. 687, to give the finder no right to the bees or to the tree, and, if he hives them and leaves them in a hive and on land, neither of which he owns, he is held to have no interest that can be the subject of larceny.

Bills and Notes.

Mere promises to pay a forged note are held, in *Barry v. Kirkland* (Ariz.) 40 L. R. A. 471, insufficient to create a liability, in the absence of circumstances to create an estoppel, when the promises were made after maturity, without consideration, and without full knowledge of the material facts.

Bonds.

The rule which makes a public officer an insurer of the safety of the public funds under his control is held, in *State v. Gramm* (Wyo.) 40 L. R. A. 690, to be based, not on the mere fact that he is a public officer entrusted with such funds, but upon the principle that his bond, either alone or in connection with the statutes, has made him an insurer, and he cannot be so held unless it is by virtue of such a contract.

Buildings.

An apartment house constructed for residence purposes only is held, in *McMurtry v. Phillips Invest. Co.* (Ky.) 40 L. R. A. 489, to be a permissible structure under a deed limiting the use of the property to "residence purposes."

Bridges.

An injury to a private barge, caused by the failure to open a drawbridge in response to proper signals because the bridge was stuck or bound, is held, in *Corning v. Saginaw*

(Mich.) 40 L. R. A. 526, to give no right of action against a city which maintained the bridge for the public good only, and without deriving any benefit from it.

Carriers.

The arrest of a street-car passenger by a policeman called by the conductor is held, in *Little Rock Traction & E. Co. v. Walker* (Ark.) 40 L. R. A. 478, to give no right of action against the street-car company, if the conductor's authority extended only to putting the passenger off the car.

For an assault with intent to commit rape upon a passenger, by a baggagemaster on a train, it is held, in *Savannah, F. & W. R. Co. v. Quo* (Ga.) 40 L. R. A. 483, that the railroad company is liable.

Liability of a shipper of lumber for injury to a railroad brakeman by negligent loading of the lumber on a car is denied in *Fowles v. Briggs* (Mich.) 40 L. R. A. 528, where the accident happened after it had become the duty of the carrier to have the car inspected.

Commerce.

A state statute making it unlawful to keep a place in which the business of transmitting money for bets on horse races, etc., either within or without the state is carried on, is upheld in *State v. Harbourne* (Conn.) 40 L. R. A. 607, against the contention that it is an unconstitutional regulation of interstate commerce, as applied to the agent of a telegraph company who keeps such a place and transmits the money to another state by telegraph.

Contracts.

A contract for the care of a person in an advanced stage of leprosy, by a laborer and his wife, who are unskilled people and have no authority to restrain the patient, and who have several small children in their family, is held, in *Baltimore v. Fairfield Imp. Co.* (Md.) 40 L. R. A. 494, to be an unreasonable one, the execution of which may be restrained because of its tendency to cause a dissemination of the leprosy.

Corporations.

A signature to a blank transfer of stock, showing that it is made by a guardian of infants, is held, in *O'Herron v. Gray* (Mass.) 40

L. R. A. 498, insufficient to pass a good title to a person taking the stock without any transfer on the books of the corporation, without inquiry, and merely as a pledge for a debt from the cashier of the bank in which the shares were placed for safe keeping, but from which they were feloniously taken by the cashier.

A contract between equal owners of all but two shares of the stock of a corporation, each of whom controls one of those shares, by which they assume to divide and dispose of the property of the corporation, is held, in *Sellers v. Greer* (Ill.) 40 L. R. A. 589, to be ineffectual to bind the corporation.

Custom.

A custom or usage of carpet making which would give the color mixer an exclusive title, as against his employer, to the various combinations and shades of color devised by him for use in the manufacture of carpets in his employer's mill, is held, in *Dempsey v. Dobson* (Pa.) 40 L. R. A. 550, to be unreasonable and therefore invalid.

Easement.

An easement of light and air is held, in *Kennedy v. Burnap* (Cal.) 40 L. R. A. 476, not to pass by implication by a conveyance of a building with windows looking out over vacant lots retained by the grantor, although the enjoyment and value of the building will be greatly impaired by any structure thereon close to the building conveyed.

Ejectment.

An ejectment for the projection of the eaves of a barn overhanging a boundary line is denied in *Rasch v. Noth* (Wis.) 40 L. R. A. 577, where the eaves of plaintiff's barn are lower than the other, and are so close to the line that the water from them falls on defendant's land.

Evidence.

A statute making books of science or art presumptive evidence of facts of general notoriety or interest is held, in *Union Pac. R. Co. v. Yates* (C. C. App. 8th C.) 40 L. R. A. 558, not to include medical works so as to make them evidence of the opinions or theories therein expressed. On the other hand, scientific works containing statistics of mechanical ex-

periments and tabulations of their results, when recognized as standard authority and generally relied upon by experts in that field, are held, in *Western Assurance Co. v. J. H. Mohlman Co.* (C. C. App. 2d C.) 40 L. R. A. 561, to be admissible to support the opinions of experts.

Fences.

The duty to trim a hedge fence planted by a landowner on his part of a division line is held, in *Kinney v. Kinney* (Iowa) 40 L. R. A. 626, not to be imposed upon him by a statute which authorizes such hedges without specifying their height or how they shall be trimmed.

Fright.

Recovery for injuries occasioned by fright, as to which the authorities are conflicting, was recently allowed in *Mack v. South Bound R. Co.* (S. C.) 40 L. R. A. 679, although there was no physical injury sustained except that caused by the fright.

Harbors.

The lease of harbor area in front of tide lands, for curing and canning fish and storing ice for packing and handling the fish, is held, in *State, Denny, v. Bridges* (Wash.) 40 L. R. A. 593, to be unlawful under the state Constitution reserving such area "for maintaining wharves, streets, and other conveniences of navigation and commerce," as the word "commerce" is qualified by the word "navigation."

Husband and Wife.

An action by a wife against persons who have wrongfully induced her husband to leave her is held, in *Gerner v. Gerner* (Pa.) 40 L. R. A. 549, to be maintainable where she is free from common-law disabilities and entitled to sue in her own name and right for torts done to her. But she is held to have no right of action against her husband's parents for advising him, in good faith, to separate from her.

The father's duty to maintain a child after divorce, in the absence of any provision in the decree on the subject, is held, in *Re Zilley* (Wis.) 40 L. R. A. 579, to continue as before, and his promise to pay the mother for maintaining a child after the time when the father was entitled to have the custody of the child

under a decree of divorce granted for the father's fault is implied, although he has ineffectually tried to get the child and has declared that he would not pay the mother for his keeping.

An order that the father pay for the support of minor children awarded to the custody of the mother by a divorce decree which made no provision for their maintenance is held, in *McKay v. Superior Court* (Cal.) 40 L. R. A. 585, to be obtainable by petition in the divorce case long after the decree had become final and the mother had remarried.

An action by a divorced wife against her former husband for the maintenance of a minor child is upheld in *Gibson v. Gibson* (Wash.) 40 L. R. A. 587, when the father is found unfit to have the custody of the child, and this has been awarded to her.

Infants.

The rule that the custody of a child is to be determined, not by the question who can provide the greater luxury or give the child more property, but with whom the child is likely to be reared and trained so as to make the better citizen, is applied in *Stringfellow v. Somerville* (Va.) 40 L. R. A. 623, as against the father of the child, who had allowed its custody to remain for five or six years with sisters of his deceased wife, in accordance with her will.

Injunction.

A mandatory injunction to compel the secret password of a grand lodge to be given to a delegate from a subordinate lodge of a benevolent society, and to permit him to participate in the deliberations, is held, in *Wellenvoss v. Grand Lodge K. of P.* (Ky.) 40 L. R. A. 488, to be beyond the province of a court of equity, unless some right of property is endangered, although an irreparable injury may be done to the delegate and his lodge by excluding him.

The mere possibility of injury by an unconstitutional statute, which may prevent insurance companies from making such contracts as persons might otherwise procure them to make is held, in *Business Men's League v. Waddill* (Mo.) 40 L. R. A. 501, insufficient to sustain an injunction against the approval of a uniform policy of insurance under an unconstitutional statute by the superintendent of insurance.

Innkeepers.

The liability for goods stolen from a peddler's cart in the custody of an innkeeper is upheld in *Cohen v. Manuel* (Me.) 40 L. R. A. 491, although the peddler had no license to peddle, as he did not lodge at the inn as a peddler.

Insurance.

Death caused by blood poisoning by germs in cotton placed by a dentist in a wound made by the removal of teeth to stop hemorrhage, is held, in *Kasten v. Interstate Casualty Co.* (Wis.) 40 L. R. A. 651, to be within a condition of an accident policy denying liability for injuries resulting "wholly or in part from poison, or anything accidentally or otherwise taken, administered, absorbed, or inhaled."

An abrasion of the skin of a toe, caused by unexpected friction of a new shoe, is held, in *Western Commercial Travelers' Association v. Smith* (C. C. App. 8th C.) 40 L. R. A. 653, to be an accidental injury within the meaning of an insurance policy.

License.

A license tax on brokers is held, in *Banta v. Chicago* (Ill.) 40 L. R. A. 611, to extend to a member of a stock exchange who buys and sells stocks, bonds, or securities on the floor of the exchange in his own name, and makes or receives delivery and payment in the execution of orders for his customers.

Masses.

A bequest to a parish priest of a certain church, to say masses for the testator, is held, in *Sherman v. Baker* (R. I.) 40 L. R. A. 717, to be valid as an outright gift to the parish priest who is then in office. Such a bequest is also held, in *Harrison v. Brophy* (Kan.) 40 L. R. A. 721, to be a gift direct to the donee, with an injunction to the performance of the ceremonial named, and not as a trust which requires beneficiaries in being who can enforce it. Regarding such a bequest as a trust, it is held, in *Hoeffer v. Clogon* (Ill.) 40 L. R. A. 730, that it is not a mere private trust, but a valid charitable gift aiding the support of the clergy and public worship, since it will be presumed that the masses will be said in public. On the other hand, such a bequest is held void in *McHugh v. McCole* (Wis.) 40 L.

R. A. 724, on the ground that it is a trust, and that there are no beneficiaries who can enforce performance of it.

Municipal Corporations.

For personal injury caused by the explosion of a cannon cracker on a city street on the Fourth of July in violation of an ordinance, when persons assembled there are exploding firecrackers without any common purpose to injure anyone, it is held, in *Aron v. Wausau* (Wis.) 40 L. R. A. 738, that no recovery can be had from the city under a statute creating a liability for injury done by a mob or a riot.

For the drowning of a child in a pond on private property not on or dangerously near to a street, it is held, in *Omaha v. Bowman* (Neb.) 40 L. R. A. 531, that the city is not liable, even if it had caused the formation of the pond by obstructing a stream, causing an overflow on the premises.

Railroads.

Abutments in a highway in accordance with a plan approved by railroad commissioners for the abolition of a grade crossing are held, in *Bristol v. New England R. Co.* (Conn.) 40 L. R. A. 479, to be lawfully made, and the town cannot enjoin their erection.

Religious Societies.

Liability of a bishop of the Roman Catholic Church to a priest in his diocese for salary is held, in *Baxter v. McDonnell* (N. Y.) 40 L. R. A. 670, not to exist in the absence of an express agreement; and the bishop is held not to be liable on his predecessor's agreement, although he has received trust property from the former bishop.

Sal.

On the question of the passing of title by delivering property to a carrier for transit to a vendee, it is held, in *A. J. Niemeyer L. Co. v. Burlington & M. R. R. Co.* (Neb.) 40 L. R. A. 534, that, if the property is consigned to the vendor himself, his agent, or his order, he is presumed to retain the title, and that, if he consigns it to the vendee, the presumption is that he intended the title to vest at once, unless he prepaid the freight, in which case he is presumed to retain title during transit, so that the right of stoppage *in transitu* continues for that time.

Set-Off.

The maturity of either debt or claim at the time of the assignment for creditors by one of the parties is held, in *Re Hatch* (N. Y.) 40 L. R. A. 664, sufficient to give a right of set-off in equity.

Sheriffs.

The failure of a sheriff to resist a mob that takes a prisoner from the jail, if due to his belief that he could not cope with the mob, is held, in *State, Cocking, v. Wade* (Md.) 40 L. R. A. 628, insufficient to make him liable in a civil action; and the sheriff's malicious act in aiding the mob is held to create no liability on his bond.

State Institutions.

An agricultural and mechanical college, which is strictly a public or quasi corporation created by the laws of Oklahoma, is held, in *Oklahoma Agricultural & M. College v. Willis* (Okla.) 40 L. R. A. 677, to be not subject to be sued in the absence of express statutory authority.

Street Railways.

The killing of a dog by an electric car, in consequence of the motorman's negligence, is held, in *Citizens' Rapid-Transit Co. v. Dew* (Tenn.) 40 L. R. A. 518, to render the street-railway company liable for the damages.

Tradenames.

The right to use the name of a retiring partner under a contract for the continuance of the use of such name "in the style of the firm" is held, in *Bagby & R. Co. v. Rivers* (Md.) 40 L. R. A. 632, to give no right to the use of the name by a corporation formed by the continuing partner and others for carrying on the same business.

Voters and Elections.

Pasting or sticking another ticket on an official ballot is held, in *Fletcher v. Wall* (Ill.) 40 L. R. A. 617, to be unlawful under a statute requiring the names of all candidates to be printed on the ballot, except names written thereon by the voter, and requiring him to mark a cross opposite the name of each candidate voted for.

Waters.

The right to fill up a natural depression which has carried off surface water from a large section of the city, although it is not technically a watercourse, is denied, and an injunction against it granted in favor of a city, in *Waverly v. Page* (Iowa) 40 L. R. A. 465, where the city has undertaken to keep it open, and its obstruction will be followed by serious injury to the city and its inhabitants.

Possessory rights to rights of way for irrigating ditches, and the right to the use of water in them, are held, in *Ada County F. Irrig. Co. v. Farmers' Canal Co.* (Idaho) 40 L. R. A. 485, to be rights which may have a separate and independent existence, so that the ditch may be conveyed, reserving the water right, or *vice versa*.

A regulation of a water company, by which it refuses to turn on water for a building until unpaid rates of previous owners or tenants are paid, is held, in *Turner v. Revere Water Co.* (Mass.) 40 L. R. A. 657, to be unreasonable and invalid, unless authorized by statute.

Wharves.

The right to erect wharves in shoal water far enough out into the lake to reach water navigable for such boats as may properly be used thereon, is held, in *Madison v. Mayers* (Wis.) 40 L. R. A. 635, to belong to the owners of land abutting on the lake, although the title is in the state.

Recent Articles in Law Journals and Reviews.

"The Punishment of Juvenile Offenders."—23 Law Magazine and Review, 289.

"Piracy in Trade Names and Descriptions."—23 Law Magazine and Review, 299.

"The Prisons Bill."—23 Law Magazine and Review, 309.

"Divorce and Jewish Law: A Study in Comparative Jurisprudence."—23 Law Magazine and Review, 317.

"Civil Business on Circuit."—23 Law Magazine and Review, 323.

"Judge Jeffreys."—23 Law Magazine and Review, 336.

"Stockbrokers' Right to Indemnity."—23 Law Magazine and Review, 355.

"Legal Education from a 'Coach's' Point of View."—23 Law Magazine and Review, 373.

"Current Notes on International Law."—23 Law Magazine and Review, 384.

"The Law of Gambling Contracts."—47 Central Law Journal, 169.

"Some Medico-Legal Questions in Personal Injury Cases."—16 Medico-Legal Journal, 93.

"The Right of Privacy as Recognized and Protected at Law and in Equity."—47 Central Law Journal, 148.

"Transitory Actions; Jurisdiction of Courts; Actions for Death by Negligence; Suits in Other Jurisdictions."—47 Central Law Journal, 158.

"The Nonliability of a Master for Injuries Sustained by an Employee Occasioned by the Negligence of a Vice Principal at the Time Doing a Servant's Work."—47 Central Law Journal, 130.

"Marriage; Conflict of Laws."—47 Central Law Journal, 134.

"International Aspects of the Spanish-American War."—34 Canada Law Journal, 477.

"Right of National Banks to Charge Usury."—47 Central Law Journal, 196.

"Probable Cause or Malice in Malicious Prosecution."—18 Canadian Law Times, 169.

"Equitable Estoppel."—18 Canadian Law Times, 181.

"Nonexpert Opinion Evidence."—47 Central Law Journal, 213.

New Books.

"United States Statutes Second Session Fifty-Fifth Congress, 1897-8." 802 pages. (Washington Law Book Co., Washington, D. C.) 1 Vol. \$1.50.

"Puterbaugh's Michigan Chancery." 3d Edition. (Callaghan & Co., Chicago, Ill.) 1 Vol. \$6.

"Jewett's Election Manual." 6th Edition. (Matthew Bender, Albany, N. Y.) 1 Vol. \$2. Paper, \$1.50.

"The Law of Private Corporations." By H. O. Taylor. 4th Edition. (Kay & Bro., Philadelphia, Pa.) 1 Vol. \$5.

"Collier on Bankruptcy." (L. C. P. Co., Rochester, N. Y.) 1 Vol. \$5.

"Preliminary Treatise upon the Law of Evidence." By Jas. B. Thayer. (Little, Brown & Co., Boston, Mass.) 1 Vol. \$3.50.

"Cooley's Constitutional Law." 3d Edition. Revised by A. C. McLaughlin. (Little, Brown & Co.) 1 Vol. \$3. Cloth, \$2.50.

"The War Revenue Law of 1898 Explained."

By John M. Gould and E. H. Savary. (Little, Brown & Co.) 1 Vol. \$1.35.

"A Trustee's Handbook." By A. P. Loring. (Little, Brown & Co.) 1 Vol. \$1.50.

"Massachusetts Land Transfer Act of 1898." Annotated by C. S. Rackemann. (Little, Brown & Co.) 1 Vol. \$1.

"Virginia Pocket Code," with Judge Burks' Notes. (Hurst & Co., Pulaski, Va.) 1 Vol. \$6.

The Humorous Side.

THE CHRISTIANITY, B. C.—In attempting to name ten Roman emperors on an examination for the bar, a student mentioned Antoninus, Crassus, and several other names ending in *us*, closing the list with "Augustine, the founder of Christianity," but added, as an afterthought, "This was before the birth of Christ, of course."

AN INADVERTENT UNDERTAKER.—A Philadelphia undertaker who was the administrator of the estate of a servant girl, amounting to about \$1,100, generously provided a "first-class funeral" for her, and thoughtfully retained over \$800 of her estate to reward himself for his generosity. In the opinion of the orphans' court it is said that an imposing cortege of twelve carriages was provided, with six professional pall bearers, each adorned with a buttonhole bouquet, while the procession of mourning relatives, numbering but five persons, was not similarly ornamented. The court adds, "This was evidently an oversight of the undertaker." A \$500, silk-lined, gold-handled, cedar, couch casket, was provided and used in the procession and charged in the bill, but amid the many details of so elaborate a ceremony and during the very natural agitation of the bereaved undertaker, a cheap one was accidentally substituted for it before the interment.

NOT A STEM WINDER.—The official who believes that red tape is sacramental has been found again in an English "Office of Works." A clock for a metropolitan county court was obtained by means of routine requisition papers, but when the time to wind it came no key could be found. To a request for the key, the Office of Works replied that the requisition called for a clock and did not mention a key, and that if a key was wanted a

fresh requisition was necessary. Thus carefully is the British Constitution defended.

THE INNERRANCY OF THE COURT.—A Georgia correspondent sends us the following:—As suggested by your editorial on "The Right to Overrule a Bad Decision" I would refer you to the following extract, delivered by Chief Justice Bleckley, in the case of *Ellison v. Georgia Railroad Co.*, in which a radical change was made in the law of amendment of the state of Georgia, 87 Ga. 691.

"Bleckley, Chief Justice:

1. Some courts live by correcting the errors of others and adhering to their own. On these terms courts of final review hold their existence, or those of them which are strictly and exclusively courts of review, without any original jurisdiction, and with no direct function but to find fault or see that none can be found. With these exalted tribunals, who live only to judge the judges, the rule of *stare decisis* is not only a canon of the public good, but a law of self-preservation. At the peril of their lives they must discover error abroad and be discreetly blind to its commission at home. Were they as ready to correct themselves as others, they could no longer speak as absolute oracles of legal truth; the reason or their existence would disappear, and their destruction would speedily supervene. Nevertheless, without serious detriment to the public or peril to themselves, they can and do admit now and then, with cautious reserve, that they have made a mistake. Their rigid dogma of infallibility allows of this much relaxation in favor of truth unwittingly forsaken. Indeed, reversion to truth in some rare instances is highly necessary to their permanent well-being. Though it is a temporary degradation from the type of judicial perfection, it has to be endured to keep the type itself respectable. Minor errors, even if quite obvious, or important errors if their existence be fairly doubtful, may be adhered to and repeated indefinitely; but the only treatment for a great and glaring error affecting the current administration of justice in all courts of original jurisdiction is to correct it. When an error of this magnitude, and which moves in so wide an orbit, competes with truth in the struggle for existence, the maxim for a supreme court, supreme in the majesty of duty as well as in the majesty of power, is not *Stare decisis*, but *Fiat justitia ruat cælum*."

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Walter H. Sanborn.

Walter H. Sanborn, judge of the United States circuit court and of the circuit court of appeals for the eighth judicial circuit, was born October 19, 1845, in Epsom, New Hampshire, at the ancestral homestead on Sanborn Hill, which had been occupied by the family since 1752. Both lines of his ancestry lead back directly to soldiers of the Revolution. His great grandfather on his father's side was not only a soldier, but was also town clerk of Epsom during the revolutionary period, and was for several years selectman of the town. His grandfather and his father were both men of much prominence, and each in turn served the people as selectman, member of the state house of representatives, and also in the state senate.

Judge Sanborn commenced to teach school when sixteen years of age. He entered Dartmouth college in 1863, but taught school each winter during his college course. Yet he led his class for the four years of his course, and was graduated with the highest honors as valedictorian in June, 1867. After several years' service as principal of the high school at Milford, he went, in February, 1868, to St. Paul, Minnesota, where one year later he was admitted to the bar in the supreme court of the state. He formed a partnership with his uncle,

General John B. Sanborn, which continued until he was appointed judge of the circuit court of the United States in 1892. His practice at the bar was remarkably great. He was one of the attorneys in more than 4,400 cases, many of which were of very great importance. In the bar associations of his city and state, in masonic organizations, and in municipal and political affairs, as well as in the courts, he was a prominent and influential man. As an orator on public occasions his services were in much demand.

Judge Sanborn was married on November 10, 1874, to Miss Emily Bruce of Milford, New Hampshire, and they have two sons and two daughters. The degree of LL. D. was conferred upon him by his Alma Mater in June, 1898. In the few years that Judge Sanborn has been on the bench he has demonstrated his judicial ability in the disposal of many cases of the greatest magnitude and importance. One of the earliest was the Omaha Bridge Case, 10 U. S. App. 98, 2 C. C. A. 174, 51 Fed. Rep. 309, and one of the later is United States v. Trans-Missouri Association, 19 U. S. App. 36, which is one of the great cases of recent years. Although his decision in the latter case has been reversed by a vote of 5 to 4 in the Supreme Court, it represents the views of a majority of all the Federal judges who passed on the question.

The Retirement of John Bull.

A modest suggestion for preventing any future quarrels between this country and Great Britain is put forth by Francis Wayland Glen, who describes himself as an ex-member of the Canadian Parliament, and the soundness of whose judgment is indicated by his quoting from Goldwin Smith as "the

specifically proved. This, of course, means pecuniary damages only. It amounts in reality to an entire exemption from responsibility for one of those outrageous libels which may ruin a reputation, break a heart, and blast a life, but cause no provable pecuniary loss. It would, for instance, sweep away the entire remedy from a blameless woman cruelly wronged by recklessly printing some lying gossip which fiends or fools had started about her.

"Full correction and apology" is often averred by newspaper men to be a sufficient remedy for unintentional wrong. It is difficult to believe in their good faith on this point. Every newspaper man knows that a scandal or sensational item will be copied into unnumbered newspapers that will never copy the correction.

A great modern newspaper is a mighty engine with almost unlimited capacity for injuring those who get in its way. Unless the highest honor and the most chivalrous regard for the rights of individuals control its entire force of editors and reporters, this powerful machine will do reckless, if not malicious, wrong to many people. It can ride over their reputations like a juggernaut and leave them crushed and helpless, if the law allows no recovery except the pitiful farce of proved pecuniary damages.

Honorable newspaper men are often so biased and warped by their selfish interest that they substantially demand the right to do heedless outrage on innocent persons for the sake of making their own business profitable. The power of the press is such that it coerces cowardly legislators and actually secures legislation to protect it from any real responsibility for the cruelest wrongs. The man who feels a stain like a wound, or the woman to whom a breath of suspicion is a stab that kills, may be unspeakably disgraced and literally heart-broken by the rash publication of a baseless rumor which is read next day by millions of people, yet the newspaper that has done the wrong offers the dastardly defense that it had no malice toward the victim, but did it only as a matter of business, to get a "scoop" on its contemporaries.

Right to Pollute Streams.

It has been usually understood to be well-settled law that no one has the right to pollute a stream to the detriment of riparian proprietors. Almost everywhere, indeed, this is un-

questionably the rule. But there are a few cases which modify it. The discharge of sewage into a stream by a municipality is usually held, as in *Chapman v. Rochester*, 110 N. Y. 278, 1 L. R. A. 296, to be subject to the same liability that exists in the case of the pollution of a stream by a private person. In Massachusetts, however, it has been held that a municipal corporation is not liable for casting sewage into the stream by a properly constructed system of sewerage, unless it is made so by statute. *Merrifield v. Worcester*, 110 Mass. 216, 14 Am. Rep. 592. But a later case holds that the use of the stream for such purpose must not be made a nuisance unless it is absolutely necessary, and that the city may be liable if it is negligent in the manner of constructing its sewerage system or in failing to purify the sewage before it enters the stream, provided this can be done at reasonable expense. *Morse v. Worcester*, 139 Mass. 389. The most striking divergence from the ordinary doctrine is that made in *Richmond v. Test*, 18 Ind. App. 482. In this case the Indiana appellate court holds that a municipal corporation is not liable in the absence of malice for injuries caused by casting sewage into a stream when it has not failed to exercise due care or skill in constructing the sewers or in operating and maintaining them. The court says: "The building of the sewers was a lawful act, and they were constructed where public necessity required they should be." This decision is based chiefly on the Massachusetts cases above cited, and on the decision of the supreme court of Indiana in *Barnard v. Shirley* (Ind.) 24 L. R. A. 568. That case was a novel one. It held that the owner of a sanitarium was not liable for the damages caused to the riparian proprietors on a stream by casting into it waters procured from an artesian well and used to bathe patients in the sanitarium, including those who were afflicted with syphilis or other infectious diseases. This decision is followed as the law of the case on a second appeal, although the record in the later case presented a less serious pollution of the stream. This seems to be the first case respecting injury by the disposal of the waters from an artesian well.

The use of streams to carry off the sewage of a city would substantially destroy the value of riparian rights below large cities, and would cause in many cases a serious menace to health. The public welfare certainly demands that some other mode of disposal of

sewage shall be adopted as population grows dense. It would be unfortunate if the courts generally should uphold the right of a city to use a stream for a sewer.

The Common-Law Doctrine of Navigable Waters.

Tracing the development of an erroneous doctrine of law is always interesting, although at the same time it is likely to be exasperating. In 1805, in the case of *Palmer v. Mulligan*, 3 Caines, 818, Chief Justice Kent stated that a river was not navigable in the common-law sense of the term at a place where the tide did not ebb and flow. This doctrine soon afterwards appeared in Kent's Commentaries and in Angell on Watercourses, and has been generally recognized by the courts of this country without any attempt to investigate the truth or falsity of the statement. But while the statement was accepted, its doctrine as to navigability was emphatically repudiated, for, in the cases as they have occurred in great numbers will be found Kent's statement as a premise, followed by the phrase, "but such is not the law in this country." That it is not the law in this country is true, and, so far as the reported cases show, it never was the law anywhere before Judge Kent stated it as law. Since then not only have the American cases accepted the statement, but in *Murphy v. Ryan*, Ir. Rep. 2 C. L. 148, the doctrine is recognized with reference for authority to Kent's Commentaries, and finally in England, in the case of *Ilchester v. Raishley*, 61 L. T. N. S. 477, it is also recognized with reference for authority to *Murphy v. Ryan*. When the law before Kent's time is examined, his statement will be found to depend for support on the very brief reports of two or three cases which decided that there was a common right of fishing in navigable waters, of which *Warren v. Matthews*, 6 Mod. 78, is the leading one. The full report of that case is as follows: "Every subject of common right may fish with lawful nets, etc., in a navigable river as well as in the sea, and the King's grant cannot bar them thereof; but the Crown only has a right to royal fish, and that the King only may grant." In Lord Fitzwalter's Case, 1 Mod. 105, Lord Hale had said that the right of fishing was common to all in rivers that flow and reflow, and in the arms of the sea. Reading one case in the light of the other, it evidently was assumed that navigability, and flow and reflow of the tide were synonymous.

But the question of what was navigable water was not involved in either case. So that, to use these cases for authority on the point that navigability depended on ebb and flow of the tide, involves, first the assumption that the language of the judge was reported accurately, which is extremely doubtful, because in nearly every other case the word "navigable" is limited by the words, "where the tide ebbs and flows;" second, the adoption as law of something which can be regarded as nothing higher than implied *dictum*. Kent cites the Royal Fishery in the River Banne, Davies, 149; *Carter v. Murcot*, 4 Burr. 2162, and *King v. Wharton*, 12 Mod. 510. The Banne Case involved the right to a fishery in tide water in the River Banne, and the court held that navigable rivers so far as the tide ebbed and flowed in them belonged to the King, and that, therefore, the fishery was his. There is nothing in the case to show that navigability ceased with the ebb and flow of the tide. In fact the implication is the other way. *Carter v. Murcot* held that a prescriptive right of fishery might be acquired in a river where the tide ebbed and flowed. And *King v. Wharton* decided that if a river runs between the land of two persons each is the owner of the part of the river which is next his land. Hale, in *De Jure Maris*, does not seem to have understood that navigability was limited by the ebb and flow of the tide, for he treats all navigable rivers, as well fresh as salt, as public highways. Neither Woolrych nor Phear limits navigability to tide water. In *Williams v. Wilcox*, 8 Ad. & El. 836, *Orr Ewing v. Colquhoun*, L. R. 2 App. Cas. 838, and *Hind v. Mansfield*, Noy, 108, navigability is recognized as extending above tide water, while in *Rex v. Montague*, 4 B. & C. 590, *Miles v. Rose*, 5 Taunt. 706, and *Lynn v. Turner*, 1 Cowp. 86, tide water is recognized as being non-navigable; Lord Mansfield saying in *Lynn v. Turner*, *ex facto oritur jus*. Moreover, only a few years before Kent made his declaration of the law, the court had, in the case of *Pierse v. Fauconberg*, Burr. 292, left it to the jury to say whether or not the Tees was navigable above Yarum bridge, without making the question depend in any way upon the tide. Since ebb and flow of the tide is not, and never has been, the test of navigability in this country, and it seems so doubtful, to say the least, that it ever was at common law, no further attention should be paid to this alleged test. Such course would eliminate a great many useless words from

[illegible]

Against rash measures for curing political ills or bettering civic conditions, he wisely says: "God forbid that anything should so change the temper of the American people as to destroy that healthy and eager discontent, alive to existing evil, constantly yearning for an ideal perfection always to be approached, if never to be attained. That is the secret of greatness and of glory. But we need to be taught the lesson of which the American lawyer is the best possible teacher—that everything which is permanent is of slow growth. The mushroom which grows in the night perishes in a day, while the oak slowly adds ring to ring through its centuries of life. I hope that our people will be taught this lesson by the American bar, especially in dealing with their Constitution."

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the opinions of the courts. The chief reason for its retention seems to be to aid in determining the ownership of the soil under the water, but since that never depended on the question of navigability, but on the question of the ebb and flow of the tide, the retention of it cannot be valuable for that purpose. The King's ownership of the sea and the soil under it was early established, and the sea was distinguished from other water by the ebb and flow of the tide, so that the King's title to the soil extended so far as the tide ebb and flowed. Above that it seems to have been by common consent conceded to be in the adjacent owner.

The Supreme Court and the Constitution.

A clear, sane, and convincing demonstration of the inestimable value of our national Supreme Court was made by Senator George F. Hoar, of Massachusetts, before the Virginia Bar Association, at its session in July, and published in the August and September issues of "The American Lawyer." Many of the hasty and passionate utterances against that court in recent years would not have been made if their authors had first read this calm, fair, and statesmanlike address.

Senator Hoar takes up in detail the cases in which the Supreme Court has held acts of Congress unconstitutional, and makes a remarkable showing for the independence and nonpartisan temper of the court. He refers to the reconstruction acts of Congress, which were held unconstitutional, and says: "In each of these cases it is to be noted the court held unconstitutional the legislation of the political party to which a majority of its members belonged—the party to which that majority had owed its appointment. In that way the political policy desired by a majority of the people lately victorious in a great civil conflict was frustrated and baffled. The self-government of states lately engaged in an armed conflict with the government of the United States was preserved;" and again: "I think, therefore, that I may confidently appeal to my audience to agree with me in saying that the great powers given by the Constitution of the United States to the Supreme Court have been in favor of liberty and of popular self-government, and not in restraint of either."

In respect to the Income Tax Case, which is the only one which he thinks his audience

would dissent from, he asks if "any single state would have adopted the national Constitution if it had been believed that the central power would ever be permitted to invade this domain for the purposes of taxation." But he insists that even if the court was wrong in this decision it has in general been in accord with the best opinion of the country, and with the best opinion of Virginia.

All know the way that popular waves of passion sweep over Congress. It justifies his conclusion that "the court is the shield of the minority and the shield of the citizen; the maintenance of its authority is in the last resort to prevent us from becoming, instead of a constitutional government, a government of a pure unchecked majority, and going surely and speedily the way of the empires and the republics of the past."

The fear that the court may thwart the will of the people is disposed of by pointing out the merely temporary effect of any judicial check to a popular movement. He said, "If we look at this judicial power, not as it bears upon immediate and temporary and fleeting conditions, but as it affects the steady, permanent, and slow growth of the country, we shall find that the effect of the declaration by the court that an attempted exercise of the legislative or executive power is a violation of our written Constitution is only to require pause, reconsideration, slowness of procedure in accomplishing what the popular will shall desire. The permanent settled will, the sober thought of a great people, will make its way in the end, either by changing the Constitution or by changing the construction."

Against rash measures for curing political wrongs or bettering civic conditions, he wisely says: "God forbid that anything should so change the temper of the American people as to destroy that healthy and eager discontent, alive to existing evil, constantly yearning for an ideal perfection always to be approached, if never to be attained. That is the secret of greatness and of glory. But we need to be taught the lesson of which the American lawyer is the best possible teacher—that everything which is permanent is of slow growth. The mushroom which grows in the night perishes in a day, while the oak slowly adds ring to ring through its centuries of life. I hope that our people will be taught this lesson by the American bar, especially in dealing with their Constitution."

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Walter A. Searborn

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The part containing any note indexed will be sent with CASE AND COMMENT for one year for \$1.

Among the New Decisions.

Bicycles.

That a bicycle is not a "tool" or "apparatus" that belongs to the "trade" or "profession" of an architect and building superintendent is decided in *Smith v. Horton* (Tex. Civ. App.) 46 S. W. 400, although it is deemed a useful and convenient mode of locomotion.

Bills and Notes.

An unrestricted guaranty of payment indorsed on a negotiable instrument is held, in *Commercial Bank v. Cheshire Provident Inst.* (Kan.) 41 L. R. A. 175, to be negotiable, and it is also held that it passes with the title to the instrument.

Carriers.

A person holding a mileage ticket, who, with intent to board a train standing on a siding near a station, without going to the station, attempts to cross the main line, is held, in *Southern R. Co. v. Smith* (C. C. App. 5th C.) 40 L. R. A. 746, to be not a passenger to whom the carrier owes extraordinary care or diligence, but only one of the general public entitled to ordinary care, if he has done nothing to notify any of the officers or agents of the carrier that he is a prospective passenger.

Contracts.

A statute reducing the lien or charge of a judgment against the estate or person of a judgment debtor and prohibiting the renewal thereof for more than one year after the act takes effect is held, in *Bettman v. Cowley* (Wash.) 40 L. R. A. 815, to be an unconstitutional impairment of the obligation of contracts so far as it applies to those made before the statute was passed.

Corporations.

A promoter who transfers to a corporation land purchased by him before the corporation was formed is held, in *Milwaukee Cold Storage Co. v. Dexter* (Wis.) 40 L. R. A. 837, to be not subject to any liability to the corporation for the amount received by him in excess of what he paid, if he made no misrepresentations or false statements about the matter, and all the subscribers had opportunity to ascertain the condition and value of the land and knew the price charged, although he did not disclose to them the amount which he paid.

Death.

The "heirs" who are entitled to a right of action for the death of a person under 2 Hill's (Wash.) Code, § 138, are held, in *Noble v. Seattle* (Wash.) 40 L. R. A. 822, to include the widow and children only, and not to include the parents of the deceased.

Easements.

The easement or right in respect to light and air from an open space annexed to a mansion-house estate, created by will by providing that the establishment shall continue as much as possible unchanged is held, in *Baker v. Willard* (Mass.) 40 L. R. A. 754, not to amount to a general right to have the space kept open for the whole extent of the court, but only to an ordinary easement of light and air for existing buildings, where there was no communication or entrance to the court from the mansion-house estate and its only use of the court was for light and air and for a drain.

Ejectment.

On a second trial in an ejectment suit taken by the defeated party as a matter of right under the terms of a statute allowing it, it is

held, in *Slauson v. Goodrich Transp. Co.* (Wis.) 40 L. R. A. 825, that rulings upon the admissibility of evidence made on the former trial have no binding force.

Election Districts.

One exercise of the legislative power to make an apportionment of the state based on the last Federal census under Ill. Const. art. 4, § 6, providing that the general assembly shall apportion the state every ten years by dividing the population as ascertained by the Federal census, is held, in *People, Mooney, v. Hutchinson* (Ill.) 40 L. R. A. 770, to exhaust the power and to preclude a change of the apportionment until the conditions provided for in the Constitution shall again exist.

Electrical Uses.

The doctrine that the placing of electric wires known to be dangerous at a place where others are lawfully entitled to be constitutes negligence is applied, in *Perham v. Portland General Elec. Co.* (Or.) 40 L. R. A. 799, to wires strung over a bridge where workmen in repairing the bridge come in contact with them; and it is also held that the apparent perfect insulation of the wires amounted to an invitation to risk contact with them, when the wires are placed where persons in performing their duties may come in contact with them.

The death of a person by contact with an abandoned telephone wire charged with electricity by crossing an electric-light wire is held, in *Mooney v. Luzerne Borough* (Pa.) 40 L. R. A. 811, to raise a question for the jury, where the wire, after it had been unused for several months and had sagged so as to interfere with public travel, was cut by a member of the borough council and wrapped around a post within easy distance of pedestrians, and with one end resting on the ground or in the water.

Homesteads.

A woman who abandons her husband and lives apart from him in another state, even though in adultery, is held, in *Duffy v. Harris* (Ark.) 40 L. R. A. 750, not to forfeit thereby her right in his estate under Ark. Const. 1874, art. 9, § 6, providing that, if the owner of a homestead died leaving a widow, it shall be exempt and she shall have the rents and profits during her natural life.

Husband and Wife.

Marriage with a person who has been found by appropriate proceedings to be mentally imbecile is held, in *Sims v. Sims* (N. C.) 40 L. R. A. 787, to be absolutely void *ab initio* and subject to be so declared by the court at any time. It is also held that a marriage void on account of lunacy cannot be cured merely by cohabitation after restoration.

A tort committed upon a wife by her husband while they are living together as husband and wife is held, in *Bandfield v. Bandfield* (Mich.) 40 L. R. A. 757, to give her no right of action in the absence of statutory provisions therefor.

Indiana.

Game killed on an Indian reservation by a tribal Indian and transported by wagon to the nearest railway station off the reservation and there delivered to a carrier to be shipped out of the state is held, in *Selkirk v. Stevens* (Minn.) 40 L. R. A. 759, to be subject to the game laws of the state.

Insurance.

A "standard guaranty to maintain 80 per cent insurance," stamped on the face of a policy of fire insurance, is held, in *Cutler v. Royal Ins. Co.* (Conn.) 41 L. R. A. 159, ineffectual to supersede a provision that the policy shall be void in case of other insurance,—at least when the policy itself is for more than 80 per cent of the value of the property.

Notice that an unearned premium will be restored, and holding the amount subject to the call of the insured, is held, in *Tisdell v. New Hampshire Fire Ins. Co.* (N. Y.) 40 L. R. A. 765, insufficient to satisfy the obligation of an insurer to return the premium as a condition of canceling the policy.

Notice of an accident causing death, given to an insurance company twenty-nine days after knowledge of the facts was obtained, is held, in *Foster v. Fidelity & C. Co.* (Wis.) 40 L. R. A. 833, to be too late to be "immediate" within the meaning of the policy.

Insurance on merchandise kept for an illegal business, such as a stock of drugs and liquors kept by a dealer who did not have the permit required by law to sell them, is upheld in *Erb v. German-American Ins. Co.* (Iowa) 40 L. R. A. 845, against the claim that it was void as against public policy.

Limitation of Actions.

A foreign corporation which has officers and agents in the state on whom service of process can be made at any time is held, in *Turcott v. Yazoo & M. V. R. Co.* (Tenn.) 40 L. R. A. 788, not to be "out of the state" within the meaning of the statute of limitations.

Master and Servant.

Notice to an employer that one who is employed to manage a brake controlling the passenger cage connected with a mine has become incompetent is held, in *Walkowski v. Penokee & G. Consol. Mines* (Mich.) 41 L. R. A. 83, not to be implied from the fact that the engineer thought he ran the cage too fast, if there was nothing to show that the information has reached the employer.

The right of a servant to rely on the promise of his master to repair defects in the place where the labor is to be performed is held, in *Illinois Steel Co. v. Mann* (Ill.) 40 L. R. A. 781, to exist for so long only as is reasonably necessary to make the repairs, and after that period the servant is held to have waived the defects and to have assumed the additional risk.

The duty of an operator or agent of a coal mine to employ a competent mine boss being imposed by statute, is held, in *Williams v. Thacker Coal & C. Co.* (W. Va.) 40 L. R. A. 812, to be fully performed by the employment of such a mine boss, and for the latter's negligence the operator or agent is held not to be liable.

Mortgages.

The right of a mortgagee to enforce the payment of the mortgage debt as against the grantee of the mortgagor who has assumed its payment is held, in *Knapp v. Connecticut Mutual L. Ins. Co.* (C. C. App. 8th C.) 40 L. R. A. 861, to rest, not upon any contract which the mortgagee can enforce at law, but upon the fact that the grantee is primarily liable, while the mortgagor is surety, so that he may be subrogated to the rights of the mortgagor and by suit in equity compel the grantee to keep his engagement. By suing the grantee the mortgagee does not adopt the mortgagor's covenants so as to prevent foreclosure of the mortgage for the balance of the debt.

Municipal Corporations.

The right of a city to accept a grant from another state to operate a toll road beyond its own limits and the limits of its own state, or to be held liable for defects in such road if operated by it, is denied in *Becker v. La Crosse* (Wis.) 40 L. R. A. 829, although such toll road is made to connect with a toll bridge which the city has built under proper authority.

Publication.

Publication of a delinquent tax list in the English language but in a newspaper which is otherwise printed in the German language is held not to be sufficient in *State, Goebel, v. Chamberlain* (Wis.) 40 L. R. A. 848, when the statute provides in general terms for publication in a newspaper printed in the county, as the English language is the language of the country to be used in all official proceedings, in the absence of statute authority to the contrary.

Trademarks.

The right of the owners of mills in Minneapolis, Minnesota, to an injunction against the use of the names "Minneapolis" and "Minnesota" on flour of a lower grade, made in another state from wheat of a different grade than that manufactured in Minneapolis, is sustained in *Pillsbury-Washburn Flour Mills Co. v. Eagle* (C. C. App. 7th C.) 41 L. R. A. 162, on the ground that the Minneapolis millers had established a high reputation for flour bearing those names and used therefor a superior quality of wheat and the same process and the same kind of machinery, subjecting their product to the same kind of inspection.

Unborn Children.

Possible afterborn children are held, in *Gavin v. Curtin* (Ill.) 40 L. R. A. 776, to be bound by a decree directing the sale of property to preserve the interest of remaindermen under a devise of land from loss for nonpayment of taxes, where the parties in being and before the court have the same incentive to accomplish the same purpose as would move the parties not in *esse* if they were in being.

Voters and Elections.

The purser of a steamer who lives on it is held, in *Jones v. Skinner* (Md.) 40 L. R. A. 753, to be unable to acquire by such residence the right to vote in a district at which the steamer ties up at her home port, where he had formerly acquired a residence in another part of the city. Substantially the same rule is enforced in *Howard v. Skinner* (Md.) 40 L. R. A. 753, in the case of a clerk who slept in a room on the boat and who had no other room or place to live, and who was unmarried.

Waters.

The drainage of seepage or surplus water from irrigated lands into a canal from which water is supplied for domestic purposes as well as for irrigation is held, in *North Point Consol. Irrig. Co. v. Utah & Salt Lake Canal Co.* (Utah) 40 L. R. A. 851, to be wrongful, when the drainage renders the waters unfit either for domestic or for irrigation purposes, and to constitute a nuisance, although a prescriptive right to do so might be acquired by twenty years' uninterrupted use.

Recent Articles in Law Journals and Reviews.

"Right to Terminate a Hiring the Duration of Which is not Expressly Provided for by the Parties."—34 *Canada Law Journal*, 587.

"Interpreting the Spirit of a Contract."—105 *Law Times*, 331.

"Jurisdiction in Suits for Judicial Separation."—105 *Law Times*, 808.

"The English, French, and Belgian Bars."—105 *Law Times*, 814.

"Trial by Jury."—6 *American Lawyer*, 325.

"Paris Courts, Lawyers, and Customs."—6 *American Lawyer*, 331.

"Delegation of Legislative Authority."—47 *Central Law Journal*, 251.

"The Most Ancient Law."—7 *Yale Law Journal*, 377.

"Federal Control of Hydraulic Mining."—7 *Yale Law Journal*, 385.

"The Evolution of Allodial Land Titles in Hawaii."—7 *Yale Law Journal*, 393.

"The Right of Shooting."—105 *Law Times*, 379.

"Pleading and Proof of Ordinances."—47 *Central Law Journal*, 233.

"Negligence; Independent Contractor."—47 *Central Law Journal*, 237.

New Books.

"Monopolies and Industrial Trusts." By Charles Fisk Beach. (Central Law Journal Co., St. Louis, Mo.) 1 Vol. \$6.

"Contracts of Pledge." By Henry Denis. (F. F. Hansell & Bro., New Orleans, La.) 1 Vol. \$6.

"Forms of Pleading." By Austin Abbott. Completed by C. C. Alden. (Baker, Voorhis & Co., New York.) 2 Vols. \$6.50 each.

"Taxation for State Purposes in Pennsylvania." By Frank M. Eastman. (Kay & Bro., Philadelphia.) 1 Vol. \$3.

"Choate's Digest of Florida Reports." Vol. 2. (F. H. Thomas Law Book Co., St. Louis, Mo.) \$10.

"Digest of English Case Law." By John Mews. (Boston Book Co., Boston, Mass.) 16 Vols. \$96.

The Humorous Side.

MISNOMER.—It is something of a shock to see Prof. Bigelow's excellent work on the Law of Fraud on Its Civil Side cited by a judge as "Big. Fraud." It's not that kind of a book.

HOW LAWYERS ARE LIKE LIES.—In a very witty address by Jesse Holdon before the Chicago Credit Men's Association (published in "The American Lawyer" for September), he said of lawyers: "Like the boy's version of the text about lying, they may be an abomination unto the Lord, but they are an ever present help in time of trouble, as all of you know by actual experience."

HIDDEN PEARLS.—One of the pearls sometimes cast before courts and then buried in the rubbish of old cases is preserved in 9 Utah Reports, p. 427. Respondent's brief says: "The purported statement of facts in appellant's brief has merely a bowing acquaintance with the evidence; it certainly can claim no undue familiarity. The ingenious gentleman who prepared it did not confine himself to a cold recital of the bare facts in the case. He embellishes and adorns it with the delightful flowers of his fancy. As a literary production it is unique. It cannot be classified. As a work of fiction it lacks interest; as a mere history it smacks too strongly of legend and fable." The reporter adds: (This beautiful exordium is inserted by the Reporter, because he feels a just pride that

such gems of humor and artistic irony are not unknown in the musty records of the court.)

WHERE THE LAW IS.—An attorney writes: "The opinion of our supreme court in the case is not instructive, and was evidently written by a judge who wished to affirm a judgment clearly unsupported by both law and facts, but in our briefs you will find the law."

IN PURSUANCE OF THE CODE.—In an affidavit taken before a Mississippi justice of the peace, on which a conviction for assault and battery was sustained, the affiant declared that the accused "did wilfully assault and strike him with a deadly weapon, to wit, 'a tobacco box,' in pursuance of chapter 29 of the Annotated Code of 1892. Against the peace and dignity of the state of Mississippi."

A TEXAS DANIEL.—A justice of the peace in Texas, on the fourth trial of a petty but tenaciously fought case in which no appeal could be had, allowed the witnesses on cross-examination to suit themselves about answering questions. A witness would say, "I won't answer no such g—d— fool questions as that," and the justice, with similar emphasis, would say, "That's right." There was a fight between the attorneys because one of them tried to stem the rushing, roaring tide of the other's eloquence to the jury by calling him a liar. These amenities were apparently regarded as proper incidents of the trial, but on complaint made against the orator for "using loud and vociferous language in a public place, to wit, the court-house," he was convicted by the justice and fined \$15. The justice seems to have a new version of Dr. Watts, which says: "Let lawyers delight to scrap and fight, for 'tis their nature to; but to yell like fury when addressing the jury, only imps of Satan will do."

U. B. D.—A young lawyer was one day making a plea before Lord Russell. It was late in the afternoon, the hour for adjournment was fast approaching, and the young barrister, anxious to finish before closing time, was hurrying along as best he could. Suddenly he spoke of 2 Q. B. D. Lord Russell interrupted him sharply. "You forget yourself, sir," he said sternly. "You forget yourself. That is no way to address this court." The tyro was profuse in apologies, and explained that he only meant to refer to 2 Queen's Bench Division of the Law Reports. But the chief justice refused to be appeased. "Why," he cried, "I might as well say to you, U. B. D." —*The Calfskin.*

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Our Protectorate over the Weak.

A white mob terrorizing black men with arson and murder in North Carolina; a private war between desperate miners and reckless employers in Illinois, while their governor makes an infamous threat to meet workmen from another state with gatling guns; the long list of Turk-like outrages by our own people on Chinamen, Italians, and other defenseless foreigners; the uprising of Indians against the oppression and corruption of government agents; the destitution, suffering, and partial extermination of Alaskan communities because of the unfitness of our government over them,—make a sardonic comment on much of the lofty buncombe about extending the blessings of our civilization over far-distant and semi-barbarous people. A duty toward helpless peoples thrown into our hands by the fortunes of war must not be shirked, but it is attended with the gravest responsibilities.

If the official positions in the government of these new dependencies, with all their opportunities for oppression and robbery, shall be treated as prizes or spoils of party victory, we shall have the shameful record of our Alaskan rule and of the "century of dishonor" in our Indian relations repeated and magnified, to our unspeakable disgrace among the nations. The operation of such a feudal system of politics would make our protectorate of weaker nations in the name of civilization result in a scandal abroad and a new source of corruption at home. To avoid this it is imperatively necessary to have some bureau or department for territorial government with a system that utterly repudiates the "claims" of political job-hunters, and makes unquestioned fitness for a position the sole test of appointment. A law to take this branch of our government out of the reach of intrigue, "pulls," and illicit influence would be the best service that any American statesman can at this time render to his nation.

A Proposed Remedy for the Scandal of Partisan Experts.

Jurors hired and paid by one party to a case would be quite as fit for an impartial court of justice as expert witnesses are when they are thus hired and paid. Public policy, without the aid of any statute, has condemned contracts to procure evidence because of their tendency to subornation of perjury. (*Goodrich v. Tenney*, 144 Ill. 422, 19 L. R. A. 371, and note; *Quirk v.*

Muller, 14 Mont. 467, 25 L. R. A. 87.) But there is quite as strong a tendency to subornation of perjury in the employment of experts to sustain one side of a case. The conviction often forces itself upon the judge, if not upon the jury, that the partisan experts would have sworn just as hard for the other side if they had been hired to do so. "Hired liars," they have been called, and some of them earn the description.

A remedy for the evil and disgrace of hiring perjured experts has been much discussed by bench and bar, but without much result. The question is concededly so difficult that any remedy must be suggested with some diffidence. Yet a very decided reform in this matter by a short and simple statute seems feasible. The plth of it is to insist that expert witnesses must be impartial. Such a statute should provide that no expert testimony shall be received from any witness who is hired by or expects pay from either party. It should also provide that the court may, in its discretion, make a reasonable allowance to the experts that both sides agree upon, or to those selected by one side only if the other side declines to call any. Such a plan seems to promise much relief from bought or biased testimony while giving ample opportunity for the testimony of real experts and the allowance to them of proper compensation. It would leave the field of selection as broad as it is now, and avoid the insuperable objections that exist against the appointment of official experts. It would not impair any constitutional right, but would be a very simple exercise of that legislative power to make rules of evidence, of which a well-known illustration is the regulation as to testimony to personal transactions with persons since deceased.

Sus Americanus.

The Spanish theory that Americans are all pigs doubtless originated in the observation of some Spaniard while traveling on an American railroad. But he was led into error by generalizing too freely from particular cases. The well-dressed porker in a car among other passengers cannot always be detected by his mere appearance, but whenever seats are scarce he reveals his heredity. The habits and disposition of his ancestors at the trough still survive in him. His peculiar pleasure is to get more than his share. His repellant face keeps most people away; and it gratifies his nature to see that timid men and shrinking women,

unaccustomed to travel, do not dare to take a vacant seat beside him. When one less timid asks if that seat is taken he brazenly declares that it is, and then sits with a double brand upon him, in seeming ignorance of the contempt with which he is regarded by his fellow travelers.

The sex of this animal has been so far assumed to be masculine, yet among the wearers of silk and seal skin there are some whose dorsal bristles are hardly concealed.

Misleading Its Readers.

"The Voice" holds, and the highest court of the land sustains the position, that the liquor business is of such a character that, were it not for the special legislation by which it is protected, common law would abolish it." This is a declaration by "The Voice" which it is difficult to characterize fitly without being discourteous. "The Voice" may make the statement without intent to deceive, but the statement must mislead those who trust it. For centuries before our statutes on the subject were enacted the common law was in force, but never at any time or any place did it abolish the liquor business or even declare it unlawful. Every decision of any court that has ever held a sale of intoxicating liquors illegal has done so because of some express enactment of the law-making power, and not by virtue of the common law. In the face of these facts "The Voice" says the common law would abolish the business except for the statutes. It is still more amazing to say that the highest court of the land sustains such a position. That court has said there is no inherent right to sell intoxicating liquors; but this it said, not in deciding that the statutes protect the business, but in explicitly deciding that the law-making power could constitutionally restrict such business. It is precisely the same doctrine which is applied to the restrictions on the business of peddlers, pawnbrokers, dealers in rags, junk, and second-hand goods, and on many other kinds of business that require regulation. To say this court has held that the statute protects the business from being abolished by the common law is an astounding misrepresentation. If "The Voice" would lead the great majority of the intelligent, earnest, and true men of the nation who are in full sympathy with its purpose but now reject its leadership, it must not persist in teaching what they know to be untrue.

The theory that a statute which restricts the liquor business thereby legalizes it is not merely baseless. It is practically pernicious because it leads logically to the stultifying position that those who believe the business to be wrong cannot unite in doing anything whatever to restrict it until they have reached such complete power that they are able to abolish it *in toto*. The theory is demonstrably false, and the conclusion is rejected by the common sense of most practical men. "The Voice" can prove its unselfish interest in the temperance cause and its fitness for moral leadership by abandoning its untenable position. That may not be pleasant but the alternative is to misrepresent the matter and impose on the ignorance of its readers.

Citing Decisions of Other States.

"If all the reports of other states now within the four corners of Vermont could be made into a bonfire to celebrate Dewey's capture of Manila, and further importation of such books prohibited, it would be a lasting benefit to the bar, the bench, the litigants, and the people." So says Judge Russell S. Taft, of the Vermont supreme court, in a wise and witty "Legal Medley" read by him at the State Bar Association, October 11, 1898. This jocund remark is what he would himself probably call a pardonable exaggeration of his dislike for what he calls "a case hunter," whom he describes as a member of the "committee on useless information." It is no wonder that a judge who delights in the reason of things should have small patience with those who would settle a question solely by the fact, and not by the reason, of a decision of another state. Judge Taft's respect for conclusions of the eminent judges of other states is shown by the fact that, in proper cases, he himself cites their decisions.

Uniformity in the laws of the several states is of so much importance that some of the ablest lawyers in the nation have given much thought and effort to secure it. They have already achieved a gratifying success in this direction by securing the adoption of a uniform law of negotiable paper by a considerable number of states. But complete uniformity of legislation would be a barren success if there were such a heterogeneity of judicial decisions as would result if each state court should quarantine itself against all judicial learning and thought from other states.

The true value of the decisions of other states is in cases which involve questions that are not settled by the law of the state in which the case is to be decided. All attempts to dispose of such a question by the merely numerical process of counting the cases pro and con seem petty enough; but not more so than a contempt for all judges who sit on the other side of a state boundary. An able lawyer, addressing an able court on an open question, will rely on the reason of the matter, but will earnestly attend to the reasoning of other courts on the question. There are now and then to be found lawyers who affect to care nothing for decisions in other states. It may be doubted how far their provincialism is mere affectation, and how far it is due to ignorance. The ablest courts in the United States doubtless agree with Judge Taft in disliking to be bombarded with decisions from afar on questions settled at home, but their opinions demonstrate that on new and doubtful questions they give hearty welcome to the reasoning and conclusions of other courts. If a case involves no question that is not settled by the law of the state, it ought not to be taken to the court of last resort; if it does involve a question that is not settled by the law of that state, every competent attorney or judge will want all the light that courts of other states have thrown upon it.

Lighting Railroad Track in City.

In few states has there yet arisen any question as to the power of a municipality to compel a railroad company to light its track within the city limits, but in Ohio and Indiana there is a considerable body of cases on the subject, while in Illinois the power to compel the lighting of a crossing at night by a red lantern has been considered and denied, where it seemed that the crossing was an ordinary one and not unusually dangerous. The Ohio and Indiana cases hold that, while a city has no implied power to require a railroad company to light its tracks, yet the legislature may, in the exercise of police power, constitutionally confer such authority on the city, but that this must be exercised in a reasonable manner, and an ordinance will not be sustained if it goes beyond what the reasonable necessity of the case requires. The case of Cincinnati, H. & D. R. Co. v. Bowling Green (Ohio) 41 L. R. A. 422, also holds that a village may require the road to be lighted by electricity and by such lamps

as are used for lighting the streets. A note to this case presents the decisions on the subject. The general result of these cases is that a law on this subject is of the same nature as laws requiring railroad companies to fence their tracks, to build cattle guards, to whistle at road crossings, to stop at railroad crossings, to keep flagmen at street crossings, to provide spark arresters for engines, to regulate speed through towns and cities, to keep headlights of a specified power upon engines, and the various other regulations which are made for the public safety.

Knowledge as Element of Negligence toward Servant.

That knowledge is a constituent element of negligence under any of its aspects will be sufficiently obvious to anyone who considers that a want of care can only be manifested in one of two ways, *vis.*, either by a failure to make such inquiries as would have turned partial and merely constructive into complete and actual knowledge, or by a failure to act prudently with a full knowledge of the conditions. Any other theory would be inconsistent with that fundamental principle of jurisprudence which makes ignorance of facts a valid excuse for an injurious act, provided such ignorance is justifiable.

In the ordinary analyses of negligence, this aspect of the tort is somewhat obscured, for the reason that they lay the chief stress upon the standards by which its existence or non-existence is determined. In the two following well-known definitions, for instance, the element of knowledge is quite latent:

Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a reasonable man would not do. Alderson, B., in *Blyth v. Birmingham Waterworks Co.* (1856) 11 Exch. 781, 25 L. J. Exch. N. S. 212, 2 Jur. N. S. 833.

Negligence is the failure to do what a reasonable and prudent man would ordinarily have done under the circumstances of the situation, or doing what such a person under the existing circumstances would not have done. The essence of the fault may be in omission or commission. The duty is dictated by the exigencies of the occasion. Swayne, J., in *Baltimore & P. R. Co. v. Jones* (1877) 95 U. S. 439, 24 L. ed. 506.

In other definitions the presence of this element is more apparent, but is not very distinctly insisted upon.

The ordinary definitions and explanations of negligence are inadequate when applied as a measure and test of an employer's liability simply because the special duty which, above all others, is imposed by the law upon him, is the duty of maintaining the instrumentalities of his business in such a condition that his servants will not be exposed to unnecessary peril.

This duty cannot be effectively discharged, unless he exercises reasonable care in seeing that the instrumentalities do not fall below a given standard of safety. The primary duty of an employer, therefore, is to obtain such knowledge as is necessary to enable him to decide whether that normal standard is or is not satisfied at any given moment, while his duty to raise the instrumentalities to that standard, after he ascertains that they come short of it, is a secondary duty imposed by the law for the reason that he must be aware that, if this is not done, his servants will be likely to suffer injury. In short, the very essence of the principle upon which he is held liable is his knowledge, either of existing conditions, or of the probable consequences of the continuance of those conditions.

The fundamental propositions necessary to make out a servant's cause of action for an injury received from some instrumentality of the master's business while in the course of his employment are: (1) That the instrumentality which caused his injury was in an abnormally dangerous condition; (2) that the accident which occurred to the servant was such as might reasonably have been expected to result from the existence of that abnormal condition; (3) that the master either actually knew of that condition, or would have known of it if he had made a proper use of the means of information which he possessed; (4) that the master, having this actual or constructive knowledge of the special risk to which the servant was exposed, omitted to take such steps as a prudent man would have taken for the protection of the servant by remedying the defect immediately, or, if that should not be feasible, by informing the servant of the existence of the risk and so placing him in a position to provide for his own safety; (5) in cases where the master's failure to examine with reasonable care and frequency the condition of his appliances is the breach of duty specifically relied upon, the servant is also required to show that the

abnormal condition which produced the injury would have been discovered by an examination of the kind which the law requires under the circumstances of the case.

Yet when the servant has established a prima facie right of action by proof of these particulars, the master may still escape liability by showing that the servant was himself aware of the danger to which he was exposed, and went on working under circumstances which charge him with an assumption of the risk, or with contributory negligence.

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The part containing any note indexed will be sent with CASE AND COMMENT for one year for \$1.

Among the New Decisions.

Bicycles.

The reasonableness of an ordinance prohibiting a person to ride a bicycle with handlebars more than 4 inches below the top of the saddle is held, in *Moore v. District of Columbia* (D. C.) 41 L. R. A. 208, to be a question of fact to be determined by evidence.

Bills and Notes.

Evidence that an indorsement of the words "Pay to the order of R. C. O. cash for account," on a certificate of deposit, was intended to make the indorsee merely an agent for collection, is held inadmissible in *United States Nat. Bank v. Geer* (Neb.) 41 L. R. A. 489, because the indorsement is unambiguous.

Carriers.

A person crossing a railroad track from a station to a platform to take a train for which he has a ticket is held, in *Young v. New York, N. H. & H. R. Co.* (Mass.) 41 L. R. A. 198, to be within the statutory provision as to liability to passengers.

Favoritism to high officials, large shippers, or powerful politicians, is held illegal under the North Carolina statutes, in *State v. Southern R. Co.* (N. C.) 41 L. R. A. 246, and the possible advantages to the railroad company from the goodwill of such persons is held insufficient to justify a discrimination in their favor.

Samples of merchandise carried by a traveling salesman are held, in *Kansas City, P. &*

G. R. Co. v. State (Ark.) 41 L. R. A. 883, not to be baggage within a statute regulating charges on excess baggage.

A statute limiting the fare to be charged by a street-railway company is sustained in *Indianapolis v. Navin* (Ind.) 41 L. R. A. 837, provided the rates are not so low as to amount to a confiscation of property or a taking of it without compensation or due process of law.

The blindness of a person is held, in *Zackery v. Mobile & O. R. Co.* (Miss.) 41 L. R. A. 885, to be insufficient ground for refusing to take him as a passenger, if he is competent to travel alone.

A state statute providing for separate, but equal, accommodations for white and colored persons on railroads, is upheld in *Smith v. State* (Tenn.) 41 L. R. A. 432, as a valid police regulation and applicable to interstate travel.

Constitutional Law.

An indirect confiscation of property by an ordinance prohibiting the owner of a carcass of a dead animal to remove it, but requiring him to pay to a public contractor a fee greater than the value of the carcass, is held unconstitutional in *Knauer v. Louisville* (Ky.) 41 L. R. A. 219.

The right of a husband to the use of his wife's real estate and to rent it for three years at a time, under statutes in force at the marriage and when the property was acquired, is held, in *Rose v. Rose* (Ky.) 41 L. R. A. 858, to be one of which the legislature cannot deprive him.

An agreement by one who sells a business and its goodwill, that he will not engage in the same business in the United States for twenty-five years, is held, in *Lufkin Rule Co. v. Fringeli* (Ohio) 41 L. R. A. 185, to be invalid as tending to create a monopoly.

But an agreement by officers of corporations not to engage for five years in any business that will interfere with that of a company to which the corporations sell their business is sustained in *Anchor Electric Co. v. Hawks* (Mass.) 41 L. R. A. 189.

Corporations.

The right of a creditor of a corporation to proceed individually against stockholders is held, in *Castleman v. Templeman* (Md.) 41 L. R. A. 367, to be merged in a decree obtained by him in another state, directing the collection of claims by a receiver.

Damages.

Only nominal damages are held recoverable in *Mobile & O. R. Co. v. Postal Teleg. Cable Co.* (Tenn.) 41 L. R. A. 403, for a telegraph line on a railroad right of way, which does not interfere with its use for railroad purposes.

Death.

The death of a stepfather is held, in *Marshall v. Macon Sash, D. & L. Co.* (Ga.) 41 L. R. A. 211, to give no right of action to a stepchild.

The right of the mother of an unmarried minor whose father is dead, to recover damages for the death of the child, is held, in *Hennessy v. Bavarian Brewing Co.* (Mo.) 41 L. R. A. 885, to exist notwithstanding the mother's marriage to one who has assumed the obligations of father to the child.

Ejectment.

The right of a city to maintain ejectment for a street of which it does not own the fee is sustained in *San Francisco v. Grote* (Cal.) 41 L. R. A. 895.

Electrical Uses.

A lineman injured by contact with a span wire charged by a trolley wire which had a broken insulator is denied a right of action, in *Anderson v. Inland Teleph. & T. Co.* (Wash.) 41 L. R. A. 410, where he failed to test the insulator, although that was his duty.

Eminent Domain.

Poles of an electric railway, if properly placed, are held, in *Snyder v. Ft. Madison St. R. Co.* (Iowa) 41 L. R. A. 845, to give no right of action to the abutting owner, whether he owns the fee of the street or not.

Executors.

Intestate property wanted for distribution is held, in *Chamberlin's Appeal* (Conn.) 41 L. R. A. 204, to be assets for the administrator *de bonis non*, under the Connecticut statutes, even if the property has been "administered" within the common-law meaning of that term.

Fines.

Fines for overcharges by an express company are held, in *Southern Exp. Co. v. Com.*,

Walker (Va.) 41 L. R. A. 486, not to be within the constitutional provision setting apart as a literary fund "all fines collected for offenses committed against the state."

Fires.

A wind existing at the time a building is set on fire is held, in *Lillibridge v. McCann* (Mich.) 41 L. R. A. 381, not to constitute an intervening cause of the burning of another building to which the fire is carried.

Garnishment.

The garnishment of a debt due to a nonresident who is not personally served within the state, and who does not voluntarily appear, is held, in *Louisville & N. R. Co. v. Nash* (Ala.) 41 L. R. A. 831, to be invalid because it does not constitute due process of law.

Husband and Wife.

A secret deed on the eve of the grantor's marriage, to prevent the wife from acquiring any interest in the property, is held, in *Arnegaard v. Arnegaard* (N. D.) 41 L. R. A. 258, to be void as to her homestead rights, but not void *in toto*.

An equitable division of the property of persons who have lived together as husband and wife under a void marriage is made in *Werner v. Werner* (Kan.) 41 L. R. A. 849, in a decree of nullity, although the court cannot grant alimony as such, because there was no marriage.

The right of a married woman to form a partnership with her husband is denied in *Haggett v. Hurley* (Me.) 41 L. R. A. 862, although the statutes make her liable for her debts as well as her torts.

Indians.

An action against an Indian belonging to a tribe and a particular reservation, brought by a white man on a contract, is held, in *Stacy v. Labell* (Wis.) 41 L. R. A. 419, to be within the jurisdiction of a state court.

Infants.

The power to commit children to an industrial school under Tennessee statutes is held, in *State, Bethell, v. Kilvington* (Tenn.) 41 L. R. A. 284, to require a proceeding in open

court and a proper investigation upon which to base a committal, and the attempt of the judge to act arbitrarily upon his personal knowledge of the facts is held irregular.

Injunction.

An injunction against keeping a bawdy house on certain premises is denied in *Neaf v. Palmer* (Ky.) 41 L. R. A. 319, although it is obnoxious to the neighborhood and unfavorably affects the salable value of property in the locality.

An injunction by a city against a nuisance affecting the comfort and convenience of the public is held proper in *Red Wing v. Guptil* (Minn.) 41 L. R. A. 821, although the nuisance is not injurious to the public health.

Insolvency.

Creditors signing a trust deed authorizing the trustee to carry on business are held, in *Wells-Stone Mercantile Co. v. Grover* (N. D.) 41 L. R. A. 252, not to make themselves thereby liable to creditors of whom the trustee purchases goods in the transaction of the business.

Insurance.

A proviso for a corresponding reduction in the amount of indemnity given by an accident insurance policy, in case the insured is injured in a more hazardous occupation than that for which he is insured, is held, in *Standard Life & Acc. Ins. Co. v. Carroll* (C. C. App. 8d C.) 41 L. R. A. 194, to be reasonable and enforceable.

The right of the creditors of an insolvent to the proceeds of his life insurance is denied in *Roberts v. Winton* (Tenn.) 41 L. R. A. 275, where the only premium he has paid is by a worthless check.

The construction of an insurance policy as to fires set by steam engines other than those "using coal for fuel, with sufficient wood to kindle or start the fire," is held, in *Thurston v. Burnett & B. D. F. M. F. Ins. Co.* (Wis.) 41 L. R. A. 316, to be a question solely for the court.

A building of which the foundation and four walls remain substantially intact, and which can be repaired for about one third its value, is held, in *Corbett v. Spring Garden Ins. Co.* (N. Y.) 41 L. R. A. 318, not to be totally destroyed within the meaning of an insurance policy.

Judgments.

The power of a court on setting aside a mere money judgment, to continue the lien thereof, so that it may attach to such judgment as may be subsequently rendered, is denied in *Farmers' Loan & T. Co. v. Killinger* (Neb.) 41 L. R. A. 222.

Landlord and Tenant.

Defects and dangers in existence when a lease is made are held, in *Willcox v. Hines* (Tenn.) 41 L. R. A. 278, to create a liability of the landlord to his tenant, if he knew of them or ought to have known of them, while the tenant did not and could not, both exercising reasonable care and diligence.

Master and Servant.

The fall of a staging built in a new building for use by a servant of a manufacturer of whom decorations have been ordered for the building is held, in *Channon v. Sanford Co.* (Conn.) 41 L. R. A. 200, to give no right of action against the manufacturer, who told the servant the builder would see to the staging, although his foreman told him it would be safe.

A gratuitous lender of brackets for use in a staging is held, in *Gagnon v. Dana* (N. H.) 41 L. R. A. 389, not to be liable to a servant of the borrower for a defect in the brackets which the lender did not actually know.

The negligence of a contractor or his employee in blasting rock on a vacant city lot, causing damage to a building upon an adjoining lot, is held, in *Berg v. Parsons* (N. Y.) 41 L. R. A. 391, to give no right of action against the proprietor of the premises.

Failure to equip freight cars with self-couplers is held, in *Greenlee v. Southern R. Co.* (N. C.) 41 L. R. A. 399, to constitute negligence *per se*. It is also held that this is continuing negligence which will preclude the defense of the brakeman's contributory negligence.

Militia.

Certiorari to review the decision of a board of military examiners respecting the competency of a person to be a militia officer is denied in *Devlin v. Dalton* (Mass.) 41 L. R. A. 379, because the proceedings are not judicial.

- Municipal Corporations.

The right of a city to make a railroad company light that part of its track within the corporate limits, even if it does not own or lease it, is upheld in *Cincinnati, H. & D. R. Co. v. Bowling Green (Ohio)* 41 L. R. A. 422.

A lease or other transfer by a city of its waterworks or water rights is held, in *Ogden City v. Bear Lake & R. Waterworks & Irr. Co. (Utah)* 41 L. R. A. 305, to be unauthorized by a general provision for the lease, conveyance, and disposal of property.

Physicians.

Practising physicians are held, in *State, Burroughs, v. Webster (Ind.)* 41 L. R. A. 212, to be subject to the power of the legislature to require new examinations for a license to determine their fitness.

The practice of Christian Science for curing a patient without recommending or administering any drug or medicine, or giving any course of physical treatment, is held, in *State, Swarts, v. Mylod (R. I.)* 41 L. R. A. 428, not to be within a statute as to the practice of medicine or surgery.

Prohibition.

The attempt of a justice of the peace to determine a case under a statute which has been actually repealed is held, in *Norfolk & W. R. Co. v. Pinnacle Coal Co. (W. Va.)* 41 L. R. A. 414, to be a usurpation of jurisdiction, for which a writ of prohibition may issue.

Street Railways.

An action against a city for a defective and dangerous street, made so by a street-railway track, is held, in *Schaefer v. Fond du Lac (Wis.)* 41 L. R. A. 287, to be not maintainable until all legal remedies have been exhausted against the railway company in possession of the track, as well as the owner of the track.

Taxes.

Manufacturing corporations within the meaning of an exemption from taxes are held, in *People, New England Dressed Meat & W. Co., v. Roberts (N. Y.)* 41 L. R. A. 228, not to include one whose business is that of slaughtering and selling sheep and lambs and their products, although it turns them into refrigerated mutton, rendered tallow, pulled wool, untanned hides, and fertilizer.

A sheriff who fails to collect taxes on property which is mortgaged for more than it is worth, but accounts for them, is held, in *Allen v. Perrine (Ky.)* 41 L. R. A. 351, to have no right to assert the tax lien against the mortgagee, to whom the property has been conveyed in part payment of the debt.

A statute for the remission or abatement of the taxes to a certain amount on insane, idiotic, infirm, or indigent persons, is held, in *State, Richards, v. Armstrong (Utah)* 41 L. R. A. 407, to be within a constitutional prohibition of exemptions.

A tax on succession to the property of a deceased person, although it creates classes, and exempts some of the classes, and makes different rates for other classes, is held valid in *Kochersperger v. Drake (Ill.)* 41 L. R. A. 446, if it is uniform as to all property in the same class.

Trusts.

An attempt of a person to place his property in trust, with remainder over, reserving the beneficial interest to himself for life, is held, in *Schenck v. Barnes (N. Y.)* 41 L. R. A. 395, to be invalid as an attempt to place it beyond the reach of his creditors.

Voters and Elections.

A primary election provided for by statute is held, in *Spier v. Baker (Cal.)* 41 L. R. A. 196, to be an election "authorized by law" within the constitutional provisions as to elections.

A corrupt practices act providing for an action to test the right of a successful candidate to his office when charged with unlawful acts, and a judgment declaring the election void and the office vacant, is held, in *Mason v. State, McCoy (Ohio)* 41 L. R. A. 291, to be a valid law.

Procuring the withdrawal of a candidate and the substitution of the name of a rival candidate on the ticket, although done by the payment of money and giving other valuable inducements, and although it results in getting additional votes for the fusion candidate, is held, in *State, Crow, v. Bland (Mo.)* 41 L. R. A. 297, to be lawful under the corrupt practices act of Missouri; and it is also held that the unlawful expenditure of money for the election of a candidate will not defeat his title to the office, if it was done without his knowledge or consent.

Waters.

A statute prohibiting the deposit of sawdust in the waters of a lake, or in tributaries thereto, is held, in *State v. Griffin* (N. H.) 41 L. R. A. 177, to be a proper exercise of the police power. With this case is a note on the statutory protection of water used for supplying a municipality.

Because the supplying of water to consumers is affected with a public use, it is held, in *Griffin v. Goldsboro Water Co.* (N. C.) 41 L. R. A. 240, that discrimination in rates between the consumers is unlawful.

The right to cross unimproved land bordering on a great pond, to obtain ice, is held, in *Slater v. Gunn* (Mass.) 41 L. R. A. 268, not to be within an ordinance making the pond free for any man to fish and fowl there, and to pass and repass thereto, so they trespass not on any man's corn or meadow.

The appropriation for domestic and irrigation purposes of more water than is necessary is held, in *Hague v. Nephi Irrigation Co.* (Utah) 41 L. R. A. 811, to leave the owner of a mill the right to take the excess for manufacturing purposes so far as necessary.

The right to build dams to aid the floating of logs is held, in *Carlson v. St. Louis River Dam & Imp. Co.* (Minn.) 41 L. R. A. 371, to be subordinate to that of the riparian owner to have his land free from overflow beyond that caused by the natural condition of the stream.

Recent Articles in Law Journals and Reviews.

"Obligations Imposed upon Municipal Corporations with Respect to Snow and Ice on Sidewalks."—47 Central Law Journal, 326.

"The Right of Maritime Capture."—33 The Law Journal, 500.

"The Judicial Crisis in the Transvaal."—14 Law Quarterly Review, 343.

"The Possibilities of Codification in India."—14 Law Quarterly Review, 367.

"Giving Time to Principal Debtors."—14 Law Quarterly Review, 379.

"The Canadian Fisheries Appeal."—14 Law Quarterly Review, 386.

"English Judges and Hindu Law."—14 Law Quarterly Review, 392.

"The Application of International Law during the Chino-Japanese War."—14 Law Quarterly Review, 405.

"Do Combinations between Laborers and Mechanics and Other Workmen to Control the Price of Their Labor Stand on the Same Legal Footing as Combinations of Dealers?"—5 Kansas Lawyer, 4.

"The Pardonng Power. Its Uses and Abuses."—5 Kansas Lawyer, 14.

"Some Questions under the New Bankruptcy Law."—47 Central Law Journal, 308.

"Privileged Publication."—47 Central Law Journal, 311.

"Status of Married Woman at Common Law." III.—4 Western Reserve Law Journal, 122.

"An Examination of the Doctrine of Malice as an Essential Element of Responsibility for Defamation Uttered on a Privileged Occasion."—6 American Lawyer, 363.

"Can International Disputes be Judicially Determined?"—6 American Lawyer, 370.

"Criminal Law and the Law of Criminals."—6 American Lawyer, 372.

"Proceed as Before. Advice to Credit Men."—26 Washington Law Reporter, 646.

"Succession of Cognates under the Mitakshara."—8 Madras Law Journal, 99.

"Grounds of Criminal Jurisdiction."—8 Madras Law Journal, 110.

"Something about Courts Martial."—3 Kansas City Bar Monthly, 178.

"Inland Watercourses."—8 Madras Law Journal, 263.

"The Rule that 'A Married Woman Can Only Make Such Contracts as Relate to Her Separate Estate,' Surveyed and Analyzed."—47 Central Law Journal, 363.

"Some Blunders of the United States Supreme Court."—2 Indiana Law Journal, 96.

"Lynching of Prisoner by Mob; Liability of Sheriff and Sureties."—47 Central Law Journal, 368.

"The Readjustment of the Collegiate to the Professional Course."—8 Yale Law Journal, 1.

"Rights under Unauthorized Corporate Contracts." 8 Yale Law Journal, 24.

"The Relation of Right to Law."—8 Yale Law Journal, 33.

"Discovery under the Judicature Acts, 1873, 1875." Part III.—12 Harvard Law Review, 151.

"Contribution between Persons Jointly Charged for Negligence."—12 Harvard Law Review, 176.

"The Law and Its Limitations."—12 Harvard Law Review, 195.

New Books.

"Robinson's County and Township Officers." 2d Ed. (The Bowen-Merrill Co., Indianapolis, Ind.) 1 Vol. \$6.

"A Handbook for Trustees." By A. P. Loring. (Little, Brown & Co., Boston, Mass.) 1 Vol. \$1.50.

"Rules of the Court of Appeals of New York." Annotated by Edmund H. Smith. (Banks & Bros., Albany, N.Y.) 1 Vol. \$1.50.

"New York Citations." (Cases Affirmed, Reversed, Modified, etc.) From 1794 to 1898. By Wm. H. Silvernail. (Banks & Bros.) 2 Vols. \$15.50.

"Stover's New York Annotated Code of Civil Procedure." 5th Ed. Annotated by Amasa J. Parker, Jr. (Banks & Bros.) 8 Vols. \$19.50.

"Thornton & Blackledge on Building and Loan Associations." (Matthew Bender, Albany, N. Y.) 1 Vol. \$6.

"History of the Development of Constitutional and Civil Liberty." By M. F. Morris. (W.C. Morrison, Washington, D.C.) 1 Vol. \$2.

The Humorous Side.

OVERTAKEN BY "TAKE OVER."—Americans have been somewhat accustomed to "take off" the British, "take on" at them, and avoid being "taken in" by them; but now we seem inclined to "take up" their Briticisms. We are at last overtaken by that highly English phrase "take over" which our newspaper men now give to the printers in every "take." They seem to be completely "taken with" it.

KNOWN BY ITS FRUITS.—The owner of the stolen brandy testified in a Texas case "that he had examined the liquor and the brandy-fruit found on the premises of the accused; that the bottles of brandy-fruit looked like some of those taken from his house, but he could not identify them by any private mark; that he had compared some of the liquor in the jug with some left in the barrel at his storehouse, and found that they did not look alike, but he attributed the difference to the different colors of the tumblers in which he compared them; that afterwards, however, he "got tight" on the contents of the jug, and was then satisfied the liquor was some of the brandy out of his barrel."

MALFEASANCE.—Away back in the North Carolina mountains there lived in the eighties a justice of the peace gifted with a great store of common sense, but of limited educational

advantages. He was the owner of a large and well conducted farm, but found time, nevertheless, to devote to his "profession," as he called it, and was quite jealous of his prestige and watchful of the conduct of rivals in the neighborhood. Suitors brought before him on the defendant side were sometimes shrewd enough to take advantage of this weakness of the squire. On one occasion the station agent of the Richmond & Danville Railroad appeared to defend a suit brought by a mountaineer for killing a scrub cow, and while waiting for the witnesses he spoke of a neighborhood rumor that "Squire B.," a J. P. living a mile or two away, had been guilty of taking some illegal fees in a recent case tried before him. "Yes," said Squire L., "I been a thinkin' 'bout that ar case a good deal, and I been a ponderin on jist what Squire B.'s been guilty of. Now, as a matter of course, it's *malfeasance*, for he taken fees he hadn't orter have tuck, and in my opinion it don't miss *malpractice*, fur."

HE CURSED EQUITY.—The Constitution adopted by the state of North Carolina in 1868 abolished courts of equity, giving the superior courts jurisdiction of all matters, legal and equitable, and the power to determine them in the same suit. Shortly afterwards Ex-judge B. was employed by a countryman to bring suit against his own brother for a trivial sum. The judge advised his client to attempt to compromise the matter, on the ground that it was too trivial to bring into court, especially considering the relationship of the parties. "Tell your brother," said the judge, "That he ought to consider the circumstances and settle, according to equity and right." His advice was followed cheerfully, but the countryman returned the next day and reported that his efforts to compromise had been without avail. "What did your brother say?" asked Judge B. "Why, Jedge," said his client, scratching his head, "he said d—n eaquity! thar warnt no sich thing as eaquity no mo, which the new consecution done killed eaquity dead as Hector!" "You go back and tell your foolish brother," said Judge B., slowly and softly, "that when he gets into the courthouse he will find that 'eaquity' lacks a good deal of being dead. Furthermore (here his voice dropped to a whisper), *he has gone and cursed 'eaquity,'* and if the judge finds it out your brother will have to go to jail for contempt of court! Tell him that the best thing for him to do is to compromise, and keep away from the courthouse for five or six years." The compromise went through.

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35:87	US	384
17	LEd	290
106	US	514
27	LEd	143
24	Fed	290
27	Fed	662
67	Fed	265
82	Mass	518
89	Mass	293
43	Conn	313
36	NJL	268
36	NJL	452
1	LRA	826n
18	LRA	304

New York courts. Ours supplement these, in that they trace the decisions through the Federal courts and more important state courts. In the marginal example *Andrews v. Durant*, 11 N. Y. 35, is shown to have been discussed in the U. S. Sup. and Circuit courts, Mass., Conn. and N. J. courts, and the question to have been annotated in the Lawyers' Reports Annotated, where all cases on the point may be found.

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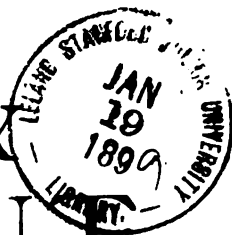
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41 LEa 862
1 Fed 127
135 Mas 471
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52 Con 592
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34 LRA 176

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INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

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DECEMBER, 1898.

No. 7

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Horace H. Lurton.

Judge Horace H. Lurton of the United States circuit court of appeals for the sixth circuit, and formerly chief justice of the supreme court of Tennessee, was born in 1844, in Campbell county, Kentucky. He was educated at Douglass University, Chicago, and Cumberland University, Lebanon, Tennessee. He began the practice of law at Clarksville, Tennessee, in 1867, in copartnership with Hon. G. A. Henry, and afterwards in association with Hon. J. E. Bailey and Hon. C. G. Smith.

Since he began the practice of law his whole career has been in the legal profession, either as lawyer or judge. He has never sought or held any political office. He was appointed by the governor to be chancellor for the sixth chancery division in February, 1875, to fill a vacancy occasioned by resignation. He was elected to the same office in November, 1876, without opposition. He resigned that office in January, 1878, and again resumed the practice of the law at Clarksville. He was elected associate justice of the supreme court of Tennessee in August, 1886, and in January, 1893, he was elected chief justice of that court. But on March 27, 1893, President Cleveland appointed him to be circuit judge for the sixth judicial district of the United States, as the successor of the Hon. Howell E. Jackson.

Since that time he has served continuously as a member of the circuit court of appeals for that judicial district, which consists of the states of Tennessee, Kentucky, Ohio, and Michigan.

Among the notable and interesting opinions written by Judge Lurton while in the supreme court of the state is that in *Nance v. Busby*, 15 L. R. A. 801, holding that excommunication from a purely congregational and independent church, by vote of a majority of the members voting at any conference, although made without notice to the accused or opportunity to vindicate himself, is an act of the church, which a civil court cannot review. Another is *Buckeye Marble & F. Co. v. Harvey*, 18 L. R. A. 252, holding that a purchase of shares in a domestic corporation by a foreign corporation engaged in a similar business, for the express purpose of controlling the former, is *ultra vires*. In *Morrow v. Nashville Iron S. & C. Co.* 3 L. R. A. 37, he held that a contract by which persons organizing a corporation were to have bonds secured by mortgage on corporate property to an amount equal to the stock they subscribe for is illegal and void. A few of the interesting cases decided by him in the circuit court of appeals are the following: *Mitchell v. Marker*, 25 L. R. A. 336, holding that passenger elevators are within the rule governing other carriers of passengers, which requires the highest degree of care; *Detroit Citizens' St. R. Co. v. Detroit*, 26 L. R. A. 667, holding that the limitation of the term of the corporate existence of a street-railway company does not prevent its taking a grant to itself and assigns of the privilege of operating its road for a longer period, and that such a privilege constitutes a typical easement which is an interest in realty, being an incorporeal hereditament; and *Peck v. Elliott*, 38 L. R. A. 616, holding that an increase of the capital of a corporation by

amending a by-law is valid when the constitution of the corporation gives power to fix the amount of capital by by-law, and that a resolution is a sufficient by-law for that purpose. His opinions in many other cases of equal, if not of greater, importance, have been selected for "The Lawyers' Reports, Annotated," but lack of space prevents special reference to them here.

Judge Lurton was married in 1867 to Miss Fanny M. Owen, of Lebanon, Tennessee, and they have two children living. Since 1886 his residence has been in Nashville, Tennessee.

Paying for the Mob.

The Ohio statute giving the next of kin of a person killed by a mob the right to recover \$5,000 from the county was held unconstitutional in *Caldwell v. Cuyahoga County*, 15 Ohio C. C. 167, 8 Ohio C. Dec. 56, affirming 4 Ohio N. P. 249, 6 Ohio Dec. 387, on the ground that it taxes the county for purely private interests. In *Mitchell v. Champaign County*, 5 Ohio N. P. 158, the court of common pleas again held the statute unconstitutional on the ground that it denied due process of law and the right of trial by jury. But the latter decision is reversed by the circuit court, which holds the act valid on the ground that its main purpose is, not to give a recovery to private persons, but to impose a penalty on the county, which is given to the next of kin, not because they are damaged, but because the legislature sees fit thus to dispose of the penalty. The question is of much interest. While not free from doubt, the opinion of Judge Wilson in support of the law has much force. Such a statute is in the highest degree salutary. It has unequaled efficacy as a means of making a community law abiding. When all taxpayers know they must pay for damage done by the mob, there will be no mob.

Package "In Care of" Third Person.

The rights of the parties on a shipment by an express company of a package consigned "in care of" a third person were claimed by counsel in the case of *United States Exp. Co. v. Hammer* (Ind. App.) 51 N. E. 953, to present a question of novel impression, as well as of importance to common carriers and

the public. In that case it appeared that the person in whose care the package was sent refused to receive it, and that the person to whom it was addressed claimed it and was identified. On this state of facts the court held that, if the party in whose care it was addressed had received and taken possession of the property when tendered, that might have been a sufficient delivery, and might have relieved the carrier from any further responsibility. But as that party refused to receive the property, and as the carrier knew that the consignee who claimed the package was the identical person to whom it belonged, he was held entitled to it. As to the lack of precedent, the court says: "We are not surprised that a case identical to this has not found its way into the books, for the principle here involved is not new, but has long been settled." The case deserves notice only because of its novelty, as the decision seems too clearly right for dispute.

Mrs. Botkin as a Fugitive.

The fiction that a person who has never been physically present in a state may be a fugitive from its jurisdiction has been seriously proposed as a basis of a demand for the surrender of the so-called fugitive, to be taken away from his residence into another state for prosecution. This demand in the celebrated case of Mrs. Botkin, who is charged with sending poisoned candy to Delaware, has been denied by the superior court of San Francisco in an able and conclusive opinion. The court cites the note in 28 L. R. A. 289, which is on the question "Who are fugitives subject to extradition." As that note states, the American courts have been unanimous in holding that a person cannot be a fugitive from justice unless he was in the demanding state when the crime was committed. A peculiarly striking application of this doctrine was made in *State v. Hall*, 115 N. C. 811, 28 L. R. A. 289, in case of a prisoner who fired a shot from North Carolina and killed a person in Tennessee. Although the court held in 114 N. C. 909, 28 L. R. A. 59, that there was no jurisdiction in North Carolina to prosecute him because the crime was committed in Tennessee, it afterwards refused to hold that his constructive presence in Tennessee, where the bullet struck his victim, was sufficient to make him a fugitive from North Carolina, in which he had been physically present all the time. That opinion is emphatically approved

in the opinion of Judge Cook in *Mrs. Botkin's* case. The doctrine of these cases is clear, and their reasoning unassailable.

The Enforcement of Law.

Respect for law is the beginning of civilization, and it is the foundation of all government. Although the better class of men in an enlightened country recognize the obligations of morality and righteousness in their dealings with each other, no nation has ever yet risen so high that the fear of the law was not the corner stone of social order and security. In the administration of law in this country there is much to be proud of, and much to disgrace us. A body of more incorruptible men than the judges of the United States never honored the bench of any nation. No class of men in the world represents a higher average of integrity and stainless honor in the performance of their trust. Even the bitterness and venom of political life rarely suggests a suspicion that a judge is corrupt. If our laws are not enforced, it is not the fault of our judges in any great degree. Nor is corruption a common thing among our prosecuting officers. Most of them are men who would scorn a bribe. Yet in spite of all this, there is a shameful laxity in the enforcement of law. This is largely responsible for the fact that our country is becoming notorious among the nations for its appalling records of crime. The most dangerous weakness in our system of self-government to-day is the general toleration of law breaking. So common is it that men have ceased to be surprised that laws are violated openly and with impunity. Even public opposition to the execution of a law is not unheard of. For doing just what his official oath compelled him to do, a police commissioner in New York city was vehemently assailed by some of the great newspapers of that city as a pig-headed fool; and the fact that he then executed the laws as he had sworn to do made many of his own party vote against him for governor. The impudent and iniquitous demand that an officer shall refuse to do his sworn duty would be impossible if public sentiment were not demoralized. The penalty for our laxness is a terrible growth of crime, until murder has become more common in the United States than in any other country of the civilized world. Honest, faithful enforcement of law is to-day the supreme necessity of the public welfare.

Curfew Ordinances.

The adoption of ordinances in many cities during the past year or two, requiring children to be off the streets at the ringing of the curfew, has made the validity of such ordinances an important question. The evil training that children get by being on the streets at night is doubtless a great source of moral degradation and crime. It is no wonder, therefore, that an attempt should be made to prevent this, or even that extreme and impracticable remedies should be proposed. The first decision by a court of last resort on the validity of such an ordinance is made in *Ex parte McCarver* (Tex. Crim. App.) 42 L. R. A. —, which holds that an ordinance making it unlawful for any person under the age of twenty-one years, unless accompanied by parent or guardian or sent for a physician, to be found on the streets or alleys of the city later than fifteen minutes after the ringing of the curfew bell, which is to be rung at 8:45 P. M., is invalid because unreasonable, paternalistic, and an invasion of personal liberty. The court says: "A minor may be unavoidably detained away from home until after night, yet in passing along the streets on his way to his home he commits an offense. He may be at church or at some social gathering in the town, and yet when the curfew bell tolls, in the midst of a sermon or exhortation, he would be compelled to leave, and hie himself to his home, or, if at a social gathering, he must make his exit in haste. He could not be sent by his parents to a drug store, or, for that matter on any errand, save and except for a physician. The rule laid down here is as rigid as under military law, and makes the tolling of the curfew bell equivalent to the drum taps of the camp. In our opinion, it is an undue invasion of the personal liberty of the citizen, as the boy or girl (for it equally applies to both) have the same rights of ingress and egress that citizens of mature years enjoy. We regard this character of legislation as an attempt to usurp the paternal functions, and as unreasonable, and we therefore hold the ordinance in question as illegal and void."

The ordinance here condemned certainly seems too sweeping to be reasonable, but it does not follow that every ordinance on the subject would be condemned. Indeed, if such a regulation were made by act of the legislature, or expressly authorized by such an act, some courts would doubtless uphold it on the ground that the reasonableness of the regulation was for the legislature, and not for the courts, to decide.

The Law and Christian Science.

Much agitation of the question of the rights of Christian scientists has resulted from the prosecution for manslaughter in England of persons deemed responsible for the death of Harold Frederic because they tried to cure him through the methods of Christian Science only. It presents one phase of the old and grave question how far the state shall protect the incompetent or the deluded against the results of their own folly. If grown men of apparently rational mind choose to rely for their own cure on Christian Science, faith cure, laying on of hands, or witch doctors, perhaps the law may well let them take the consequences, even if it refuses to let them thus trifle with the life of their dependent children. But the right of a person to engage in practice as a healer of diseases for money is quite another matter. There may be grave doubt as to the constitutional power of the legislature to compel any person of full age to employ a physician for himself; there can be none as to the power to prevent him from practising as a physician or healer for money, unless duly licensed to do so. No one has an inherent right to set up as a healer of diseases for pay in defiance of the law on the subject. He whom the state shall authorize to engage in such business ought to be equipped with something more than a delusion or a capacity to delude others. No constitutional question is plainer than the power of the state to prescribe qualifications for practising any profession which requires special fitness, and the improper exercise of which may cause harm to the people. Numerous decisions on this subject, as shown by the note in 14 L. R. A. 581, establish this beyond dispute.

The claim of religious liberty to practise healing and take pay therefor has been advanced; but it is well answered by Commissioner Ryan in the case of *State v. Buswell* (Neb.) 24 L. R. A. 68, by saying: "It is confidently believed that the exercise of the art of healing for compensation, whether exacted as a fee or expected as a gratuity, cannot be classed as an act of worship. Neither is it the performance of a religious duty, as was claimed in the district court." The judge also turns the scriptures against the healer in that case most effectively by quoting the account of Simon, a sorcerer, to whom Peter said, "Thy money perish with thee, because thou hast thought that the gift of God may be purchased with money." He also quotes the account "of the healing of Naaman of leprosy

by compliance with a very simple hydropathic course of treatment prescribed by the prophet Elisha," and the terrible punishment of Gehazi, the prophet's servant, for secretly accepting pay for the cure after the prophet had declined to take it.

The status of one who engages in the practice of Christian Science under the statutes of any state is, of course, a matter to be determined by the construction of those statutes.

Thus, in the recent case of *State, Swarts, v. Mylod* (R. I.) 41 L. R. A. 428, it is held that a statute prohibiting the practice of medicine or surgery in any of its branches without a certificate did not apply to the practice of Christian Science by prayer and encouraging the patient, without recommending or administering any drugs or medicine or giving him any course of physical treatment. On the other hand, in *State v. Buswell*, *supra*, the statute was made expressly applicable to any person "who shall operate on, profess to heal, or prescribe for, or otherwise treat any physical or mental ailment of another." This was held to be violated by the Christian scientists.

Choate's Tribute to Choate.

An address to be read with delight was made by Joseph H. Choate at the unveiling of the statue of Rufus Choate in the Suffolk county courthouse, Boston, on October 15 last. Loving admiration, just pride, and elevated thought were blended in the eloquent tribute paid by the Choate of to-day to the Choate of yesterday. The address is in 32 Am. Law Rev. 831, and 6 "American Lawyer," 451.

In speaking of the lineage and training of Rufus Choate, it says: "He came of a long line of pious and devout ancestors, whose living was as plain as their thinking was high. It was from father and mother that he derived the flame of intellect, the glow of spirit, and the beauty of temperament that were so unique.

"And his nurture to manhood was worthy of the child. It was 'the nurture and admonition of the Lord.' From that rough pine cradle, which is still preserved in the room where he was born, to his premature grave, at the age of fifty-nine, it was one long course of training and discipline of mind and character, without pause or rest. It began with that well-thumbed and dog-eared Bible from Hog Island, its leaves actually worn away by the pious hands that had turned them, read daily in the family from January to December, in

at Genesis and out at Revelation every two years, and when a child was born in the household, the only celebration, the only festivity, was to turn back to the first chapter and read once more how 'in the beginning God created the heaven and the earth,' and all that in them is.

"And upon this solid rock of the Scriptures he built a magnificent structure of knowledge and acquirement, to which few men in America have ever attained. . . . His splendid and blazing intellect, fed and enriched by constant study of the best thoughts of the great minds of the race, his all persuasive eloquence, his teeming and radiant imagination, whirling his hearers along with it, and sometimes overpowering himself, his brilliant and sportive fancy, lighting up the most arid subjects with the glow of sunrise, his prodigious and never-failing memory, and his playful wit, always bursting forth with irresistible impulse, have been the subject of scores of essays and criticisms, all struggling with the vain effort to describe and crystallize the fascinating and magical charm of his speech and his influence."

The price paid for his success is described in these words: "Think of a man already walking the giddy heights of assured success, already a senator of the United States from Massachusetts, or even years afterward, when the end of his professional labors was already in sight, schooling himself to daily tasks in law, rhetoric, in oratory, seeking always for the actual truth, and for the 'best language' in which to embody it—the 'precisely one right word' by which to utter it—think of such a man, with all his ardent taste for the beautiful in every domain of human life, going through the grinding work of taking each successive volume of the Massachusetts reports as they came out, down to the last year of his practice, and making a brief in every case in which he had not been himself engaged, with new researches to see how he might have presented it, and thus to keep up with the procession of the law. Verily 'all things are full of labor; man cannot utter it; the eye is not satisfied with seeing, nor the ear filled with hearing.'"

The character of Rufus Choate, as seen by his associates, is indicated by the statement of Chief Justice Shaw respecting the attempt to induce Mr. Choate to take the place in the Harvard Law School made vacant by the death of Mr. Justice Story, that in the case of Mr. Choate it was considered quite indispensable that he should reside in Cambridge, "on ac-

count of the influence which his genial manners, his habitual presence, and the force of his character would be likely to exert over the young men drawn from every part of the United States to listen to his instructions."

With natural pride his nephew says: "What richer tribute could there be to personal and professional work than such words from such lips? He was the fit man to mold the characters of the youth, not of the city or the state only, but of the whole nation. So let the statue stand as notice to all who seek to enter here that the first requisite of all true renown in our noble profession—renown not for a day or a life only, but for generations—is character."

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The part containing any note indexed will be sent with **CASE AND COMMENT** for one year for \$1.

Among the New Decisions.

Banks.

The rule that a drawee bank is bound to know the signature of its depositor is applied in *First Nat. Bank of Belmont v. First Nat. Bank of Barnesville (Ohio)* 41 L. R. A. 584, with the effect of denying the right of a bank which has paid a forged check to obtain repayment from the party to which it paid the money.

The fact that a bank depositor procures a rubber stamp which will make a fac simile of his signature, while the bank has no notice of that fact, is held, in *Robb v. Pennsylvania Company for Insurance (Pa.)* 41 L. R. A. 695, to be insufficient ground for charging him with the loss when the bank pays a check to which his name was forged by a clerk who clandestinely obtained and used the stamp for that purpose.

Carriers.

A woman who undertook to get on a mixed train at a distance from the depot while the train was being made up, without any invitation to get on it at that place, is held, in *Jones v. New York Central & H. R. R. Co. (N. Y.)* 41 L. R. A. 490, to have no right of action for injuries sustained by the sudden jolting of the car as she was getting on.

A experienced traveler who steps out of a sleeping car and falls upon the track when he supposes he is entering the car closet, while the train is passing through a tunnel and the car is dark, at about 6 o'clock in the morning,

is held, in *Piper v. New York Central & H. R. R. Co.* (N. Y.) 41 L. R. A. 724, to be guilty of such negligence as will preclude his recovery even if the carrier is negligent.

ChamPERTY.

An agreement by an attorney to prosecute a suit entirely at his own expense, in consideration of one half the recovery, is held, in *Johnson v. Van Wyck* (D. C.) 41 L. R. A. 520, to be void for champerty.

CHECKS.

The payee of a check which is stolen from him and put in circulation by forgery is held, in *Shepard & M. L. Co. v. Eldridge* (Mass.) 41 L. R. A. 617, to be estopped from collecting it, if, with knowledge of the facts, he misled the drawer to his prejudice, and thereby placed him in a worse position than he would otherwise have been in with reference to the assertion or protection of his rights.

CONFLICT OF LAWS.

The question whether contributory negligence as a defense is to be determined by the law of the forum or the law of the place of injury is one of some novelty, but it is held, in *Louisville & N. R. Co. v. Whitlow* (Ky.) 41 L. R. A. 614, that the law of the place of the injury governs.

CONSTITUTIONAL LAW.

A statute relieving from the imputation of usury all contracts made by a building and loan association under a charter of doubtful validity is upheld in *Smoot v. People's Perpetual Loan & B. Assn.* (Va.) 41 L. R. A. 589, on the ground that, although retroactive, it merely binds the parties to the contract which they intended to make.

A state Constitution reducing the number of a grand jury and permitting conviction by less than a unanimous vote of the petit jury is held, in *State v. Caldwell* (La.) 41 L. R. A. 718, to be valid as applied to the prosecution of crimes previously committed, and not to be an *ex post facto* law, because the changes relate merely to the remedy.

Contracts.

A contract for a rebate on purchases, on condition that the purchaser deals exclusively with the seller for a certain time, is held, in *Dennehy & Co. v. McNulta* (C. C. App. 7th C.) 41 L. R. A. 609, to be unenforceable without proof of the performance of the condition, even if that was invalid as tending to a monopoly, since that was the sole consideration, and, if that failed, the contract failed.

DAMAGES.

The measure of damages for coal taken by a tenant in common without right, but in good faith, believing he had title, is held, in *Keys v. Pittsburg & W. Coal Co.* (Ohio) 41 L. R. A. 681, to be the value of the coal in place at the time it was mined.

An electric passenger railroad on a country highway is held, in *Zehren v. Milwaukee Electric R. & L. Co.* (Wis.) 41 L. R. A. 575, to constitute an additional burden which requires the consent of the abutting owner and payment of compensation.

ELEVATORS.

The insufficiency of the railing of a freight elevator to comply with a statute is held, in *Malloy v. New York Real Estate Assn.* (N. Y.) 41 L. R. A. 487, not to make the proprietor liable to a person who fell into the shaft, not because the railing was insufficient, but because it was left out of place and the shaft left unguarded by the negligence of a third person.

EVIDENCE.

The rule that a presumption of negligence does not arise from the fact of an injury is applied in *Benedick v. Potts* (Md.) 41 L. R. A. 478, where a person on a mimic railway was on a car when it entered a tunnel but was not on it when it emerged, and was found unconscious in the tunnel, while other persons passed through safely, and there was no defect in, or abnormal condition affecting, the means of transportation.

The presumption against suicide is held, in *Johns v. Northwestern Mut. Rel. Assn.* (Wis.) 41 L. R. A. 587, insufficient to sustain a cause of action for accident insurance, where the insured went to bed as usual, was found next

morning in an underground cistern back of the house, with underclothes, pants, and stockings on, but no coat, and the opening to the cistern was 15 by 20 inches.

Highways.

The implied duty of the owner to use reasonable care in inspecting and repairing a grate in a sidewalk in front of his premises is held, in *Canandaigua v. Foster* (N. Y.) 41 L. R. A. 554, to continue notwithstanding his lease of a part of the structure on the abutting land and its occupation by a tenant, although the tenant has, by implication, the exclusive right to use the grate.

Injunction.

An injunction to prevent members of the supreme lodge of a fraternal beneficiary association from excluding any properly qualified state representatives from the right to vote is held to be within the power of a court of equity in *Supreme Lodge of the Order of the Golden Chain v. Simerling* (Md.) 41 L. R. A. 720; but an injunction against the performance by officers of their duties, on the ground that their election was invalid, is held not to be a proper remedy.

Insolvency.

Preference of usurious debts is held, in *Hiller v. Ellis* (Miss.) 41 L. R. A. 707, to make an assignment for the benefit of creditors void.

Insurance.

A passenger riding on a railroad engine by invitation of an officer of the road is held, in *Berliner v. Travelers' Ins. Co.* (Cal.) 41 L. R. A. 467, to remain a passenger within the provisions of an accident insurance policy, doubling the amount of insurance in case of injury in a passenger conveyance, and it is also held that he is not within provisos as to more hazardous exposures, or as to injuries on a conveyance not provided for passengers.

A revocation of the license of a foreign insurance company because of its failure to pay the license fees required for former years during which it had done business in the state is sustained in *Travelers' Ins. Co. v. Fricke* (Wis.) 41 L. R. A. 557, as the failure to com-

ply with the law is a present, existing failure.

An exception as to "change of occupants without increase of hazard" in an insurance policy prohibiting change of interest, title, or possession, is held, in *Herman Bros., L. & Co. v. Katz Bros.* (Tenn.) 41 L. R. A. 700, to be applicable to personal as well as to real property.

Limitation of Actions.

Payments by the maker of a note are held, in *Maddox v. Duncan* (Mo.) 41 L. R. A. 581, ineffectual to interrupt the running of the statute of limitations as to an indorser.

A partial payment by a principal debtor or his absence from the state is held, in *Mozingo v. Ross* (Ind.) 41 L. R. A. 612, ineffectual to suspend or interrupt the statute of limitations in favor of his surety.

Municipal Corporations.

The destruction of a mill and milldam by village trustees in time of danger to prevent damage to a highway and other property is held, in *Aitken v. Wells River* (Vt.) 41 L. R. A. 586, not to be an exercise of eminent domain but rather of the police power, and the municipality is held not to be liable therefor because they do not act as its servants or agents in so doing.

Negligence.

The theory that a landowner owes no duty of protection to a trespasser upon his land when the owner does not know of the trespass or in any manner induce it is denied in *O'Leary v. Brooks Elevator Co.* (N. D.) 41 L. R. A. 677, and, as he owes him no duty, it is held that he cannot be liable for negligence toward him. This was a case of injury to a child by a dangerous shaft or tumbling rod running across a place where boys sometimes played.

The theory that the negligence of a parent or guardian can be imputed to an infant so as to preclude its right of action against a third person for negligence, which has been gradually repudiated in nearly all jurisdictions, is now repudiated also in Indiana, in the case of *Evansville v. Schenn* (Ind.) 41 L. R. A. 728, which overrules prior decisions on the subject.

Notaries.

The ineligibility of a woman to be a notary public is decided in *State, ex rel. Monnett, v. Adams* (Ohio) 41 L. R. A. 727, on the ground that the Constitution requires every officer to be an elector and every elector to be a male citizen.

Patents.

A state statute requiring the vendor of patent rights to file with the clerk copies of his letters patent, with an affidavit that they are genuine and unrevoked, and that he has authority to sell, and also providing that the words, "Given for a patent right," shall be inserted in any written obligation taken on a sale thereof, are upheld in *Mason v. McLeod* (Kan.) 41 L. R. A. 548, as reasonable police regulations which do not violate the Federal Constitution or the rights of the patentee under the Federal law.

Peddlers.

The sale of a frame for a portrait, made in another state to fill an order taken by a solicitor in the state where it was delivered, is held, in *State v. Coop* (S. C.) 41 L. R. A. 501, to be a mere incident to the taking of the order and not within a statute against peddling without license, where the order for the portrait contained a provision for its delivery in a frame which the purchaser should have the option of buying at wholesale price.

Railroads.

An ordinance requiring railroad companies to construct and keep in repair viaducts over streets crossed by their tracks is held, in *Chicago, B. & Q. R. Co. v. State, ex rel. Omaha* (Neb.) 41 L. R. A. 481, to be a valid exercise of the police power of the state. This decision was affirmed by the Supreme Court of the United States in 170 U. S. 57, 42 L. ed. 948.

Schools.

The exclusion of women from the principalship of grammar schools for boys, or mixed or combined grammar schools, is held, in *Com., ex rel. Scott, v. Board of Public Education*

(Pa.) 41 L. R. A. 498, to be within the discretion of the Philadelphia board of education, which is empowered to determine the qualifications of teachers and classify or grade them.

Shooting.

Persons charged with shooting firearms without reasonable excuse, in violation of an ordinance, are held, in *Chesterfield v. Ratliff* (S. C.) 41 L. R. A. 503, entitled to show that they were shooting at a rabbit in a corn patch, and that they had suffered from depredations of the rabbits, in order to present a reasonable excuse for the shooting. Whether the excuse was or was not reasonable is held to be a question for the jury.

Street Railways.

The obligation of a street-railway company to operate its line is held, in *State, ex rel. Grinsfelder, v. Spokane Street R. Co.* (Wash.) 41 L. R. A. 515, to be enforceable by mandamus, when the company attempts to discontinue the service.

Taxes.

A tax on nonresident trustees for property held by them outside the state, the income of which is payable to residents of the state, is held invalid in *Augusta v. Kimball* (Me.) 41 L. R. A. 475, although they derive title under a will and a probate court of their own state, in which they have to render accounts.

Tolls.

The exaction of toll from a bicycle rider on a turnpike is held, in *Gloucester & S. Turnp. Co. v. Leppce* (N. J.) 41 L. R. A. 457, to be unauthorized by a charter giving a right to toll for every carriage drawn by one or more beasts, and the right to stop any person driving any carriage of burden or pleasure who attempts to pass the gates without paying toll.

Trademarks.

The use of the name of a place as a trademark for shoes which are not made there, in order to get the advantage of the reputatio

of shoes made at that place, is held, in *Coleman, B. & W. Co. v. Dannenberg Co. (Ga.)* 41 L. R. A. 470, to be such a deception as would prevent the protection of such trademark by a court of equity.

Trial.

Coercion of a jury for which a verdict will be avoided is held, in *People v. Sheldon (N. Y.)* 41 L. R. A. 644, to be shown when the jury agreed only after being out eighty-four hours, without beds or cots, during forty of which they were confined in a small room, and had reason to believe, from the remarks of the court and the treatment given them, that a still longer confinement on chairs and benches was in store for them, while the judge also told them, on a report that they could not agree, that their failure to agree was "almost to confess incompetency."

Trusts.

An unassignable interest of a beneficiary, free from subjection to claims of creditors, is held, in *Seymour v. McAvoy (Cal.)* 41 L. R. A. 544, to be created by a trust for a widow's support during life and a daughter's support until marriage, although the daughter has an interest contingent upon her marriage and another contingent upon her surviving her mother.

Unborn Children.

The unborn heirs of a person against whose estate an action is brought to establish claims, to which living heirs of the same class are made parties, are regarded, in *Harrison v. Turnbull (Va.)* 41 L. R. A. 708, as parties by representation and bound by the decree as effectually as if they had actually been parties to the action.

Waters.

The right of passage on a navigable stream is held, in *Coyne v. Mississippi & R. River Boom Co. (Minn.)* 41 L. R. A. 494, to be a common and paramount right, which includes the right to float logs, if they are driven in an ordinarily careful and prudent manner; and in such case the party driving them is not liable for damages which may result to riparian owners.

Recent Articles in Law Journals and Reviews.

"Easements."—6 *American Lawyer*, 417.

"The Unification of Maritime Law: Antwerp Conference, 1898."—24 *Law Magazine and Review*, 64.

"Anti-Football Legislation."—4 *Virginia Law Register*, 440.

"Redemption and Foreclosure of Building Association Mortgages."—31 *Chicago Legal News*, 108.

"The Liability of a Borrowing Member of an Insolvent Building and Loan Association."—47 *Central Law Journal*, 448.

"Contracts of Hire for Personal Services Indefinite as to Time."—47 *Central Law Journal*, 426.

"A Recent Attempt to Limit the Independent Contractor Doctrine."—8 *Yale Law Journal*, 68.

"The Colorado Doctrine of Riparian Rights, and Some Unsettled Questions."—8 *Yale Law Journal*, 71.

"The Connecticut Statute against Perpetuities."—8 *Yale Law Journal*, 83.

"The Right of the Landowner to the Mineral, Oil, and Natural Gas in His Land."—9 *Indiana Law Journal*, 38.

"The Test of Negotiability in Securities."—47 *Central Law Journal*, 884.

"Conciliation and Arbitration in Trade Disputes."—24 *Law Magazine and Review*, 1.

"Local Government in England and Ireland."—24 *Law Magazine and Review*, 23.

"'Actio Personalis Moritur cum Persona' as Applied to Negligence."—24 *Law Magazine and Review*, 89.

"Is There a Fashoda Question?"—24 *Law Magazine and Review*, 55.

"Judge and Lawyer."—24 *Law Magazine and Review*, 81.

"The Attorney in the Poets."—24 *Law Magazine and Review*, 96.

"On the Origin and Growth of Criminal Law."—18 *Canadian Law Times*, 217.

"Expropriation of Property."—18 *Canadian Law Times*, 280.

"The Scintilla Rule, and Its Relations to Trial by Jury."—4 *Western Reserve Law Journal*, 148.

"Some of the International Aspects of the Cuban Question."—6 *American Lawyer*, 406.

"The New Feudalism."—6 *American Lawyer*, 413.

"Annual Address before the Ohio State Bar Association."—6 *American Lawyer*, 415.

New Books.

"Bouvier's Law Dictionary." New Edition. By Francis Rawle. Vol. 2. (Boston Book Co., Boston, Mass.) \$6. This work, long the standard, is greatly enlarged and enriched in the new edition. The new work is of great value.

"Digest of the Decisions of the Federal Courts and Commissioner of Patents, Relating to Patents, Trademarks, Labels, and Copyrights." By Louis M. Sanders. (John Byrne & Co., Washington, D. C.) 1 Vol. \$3.

"National Bankruptcy Law." By E. C. Brandenburg. (Callaghan & Co., Chicago.) 1 Vol. \$4.50.

"Lectures on the 14th Amendment to the Constitution of the United States." By Wm. D. Guthrie. (Little, Brown & Co., Boston.) 1 Vol. \$2.50.

"Modern Political Institutions." By Simeon E. Baldwin. (Little, Brown & Co.) 1 Vol. \$2.

"Town and County Officers' Manual." By Frank B. Gilbert. (Matthew Bender, Albany, N. Y.) 1 Vol. \$5.

"United States Internal Revenue Laws, Including War Revenue Law of 1898." Annotated by Mark Ash and William Ash. (Baker, Voorhis & Co., New York.) 1 Vol. \$5.

"Public Land and Mining Laws of Alaska, British Columbia, and the Northwest Territory." Compiled and Published by Gilbert Wyman, Fruitvale, Alameda County, Cal. 1 Vol. \$3.50.

"Bolles' Negotiable and Non-negotiable Instruments in Pennsylvania." (T. & J. W. Johnson & Co., Philadelphia.) \$6.

"Kelley's Questions and Answers for New Jersey Lawyers and Students." (New Jersey Law Journal Pub. Co., Plainfield, N. J.) 1 Vol. \$5.

The Humorous Side.

AN HIBERNIAN PHILOLOGIST.—A correspondent writes that an old Irishman dropped into a lawyer's office one day and said, "Well, I see the bankrupt law is passed." The lawyer said, "Yes." Said the Irishman, "Then I'll get my money out of the bank quick." "Why will you do that," he was asked. "Sure," said he, "don't bankrupt mean bank broke, and, if the bank's broke, won't I lose my money?"

PURGING THE PROFESSION.—Apropos of our recent item "How Lawyers Are Like Lies," a Texas correspondent writes that long ago he was riding with a dignified judge down

the levee on the Mississippi river, journeying toward court, when the judge, noticing that something was planted in freshly made rows unusually wide apart, asked what the crop could be. A tipsy countryman answered, "That's castor beans, for makin' castor oil to work all the lies outen the lawyers."

ORDER IN THE COURT.—In a Kentucky police court some years ago the judge was a mild tempered old physician, while the constable was a Boanerges, full of the importance of his function, who had an artificial leg like a hitching post or sawlog. During the trial of a suit for tuition by a school teacher against a red-headed, one-eyed patron of his school, the parties got into a fight, but that was of short duration. The constable bore down upon them with his stick of timber smiting the floor like a lightning pile driver, while he yelled to the defendant, "Set down, you—you, red-headed, one-eyed son of a b—." The court said, "That's right, Mr. Constable, keep order in the court."

No such constable seems to have been present in the Illinois court in which the justice made the following entry on his docket: "The fite was willingly fit in view of the justice."

TO PREVENT SPARKING.—Devices "to prevent sparking" are discussed in a recent patent case. One is a "magnetic blowout," but blowouts are not only old and well-known devices, but they have always aggravated the trouble. Another remedy is an "arc-spanner," [perhapsspanker intended]; but this heroic remedy is rarely more effectual than a blowout. Still another remedy is a "solenoid," but even a soul annoyed is not proof against sparking. In truth, it is a pity to waste good brains on a hopeless task. There is more hope of success for inventors on the problem of perpetual motion. However ingenious their devices, they can never prevent sparking; and, if they could succeed, a patent for the purpose would be against public policy, and its use would be a contempt of the court of common sense.

THE LOST CHORD.—As a suspected cattle thief rode on horseback to a pasture where the stolen cattle were, a man waiting for him, who wished to detain him until the deputy sheriff came, laid his left hand on the back of the horse and in a friendly way tried to hold the suspected party in conversation. The suspect soon said, "Well, I must be going." The other said, "Oh, no. Let's talk a while." The suspect declined. Then said the other, "Let's sing something like we used to when we went to singing school." But there was no duet that day in Arcadia. Instead of beating the time in sweet accord, the suspect beat his sentimental friend over the head and escaped.

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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

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VOL. 5

JANUARY, 1899.

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William L. Putnam.

The historic name of Putnam has been worthily borne in different states and in various positions in life. On the bench of the United States circuit court and court of appeals in the first circuit it is now honorably borne by William Le Baron Putnam, of Portland, Maine.

Judge Putnam is a native and life-long resident of Maine. He was born in Bath on May 26, 1835. Educated at Bowdoin College, he graduated in 1855. He then studied law and was admitted to the bar at Bath in 1858. But he chose the larger field at Portland for the practice of his profession. In this, the chief city of his state, he rapidly rose to prominence. In 1869 he was chosen mayor of that city. Twice he was nominated by his party for judge of the supreme court of the state, and in 1888 was the Democratic nominee for governor, but it was the year of a presidential election and the Republicans carried the state. In September, 1887, he was appointed commissioner of the United States to settle the differences between the United States and Great Britain in respect to Canadian fisheries. And he was again appointed by President Cleveland a commissioner for the United States under the convention with Great Britain of February 8, 1896. The degree of LL. D. was conferred upon Judge Putnam in

1894 by Bowdoin College, and again in 1898 by Brown University.

The high reputation for ability, which the bench of the United States circuit court in the first circuit has always borne, it still maintains. To that bench Judge Putnam was appointed March 17, 1892. A long list of decisions on questions of every kind has been handed down by Judge Putnam since that date. The case of *King v. McLean Asylum*, 21 U. S. App. 407, 26 L. R. A. 784, in which Judge Putnam wrote the opinion of the circuit court of appeals, decided for the first time that a habeas corpus case involving the right to personal liberty was one of the controversies of which the Federal courts might take jurisdiction on the ground of diverse citizenship. The case of *LePage Company v. Russia Cement Co.* 5 U. S. App. 112, 17 L. R. A. 354, was one in which Judge Putnam held that the right to use one's own name as the trademark of an article might be denied when he had transferred his interest in and the goodwill of the business in which the trade name was used. In *American Bell Teleph. Co. v. United States*, 33 U. S. App. 236, on a bill by the United States to cancel the Berliner telephone patent, the opinion of Judge Putnam held, among other things, that a patent could not be canceled at suit by the United States because of the fact that the invention was covered by a prior patent. This decision was affirmed by the Supreme Court of the United States in 167 U. S. 224, 42 L. ed. 144. These merely illustrate the importance and variety of the cases already decided by Judge Putnam in the few years that he has been on the bench.

Railing at the Court.

"Every United States Supreme Court judge will stand by his party when great party interests are at stake," says a w

slashing ipse dixits in the "Indiana Law Journal." In proof of this he does not cite a single illustration of strict party division in any decision of that court, but refers to such a division by five justices sitting as members of the electoral commission. The fact is that in nearly every case of great political importance, from the time when the nation was stirred over the first legal tender case down to the recent political upheaval over the income tax decision, judges of both political parties have agreed in the decision of the court; and when there were several dissenters, they also represented both political parties. Acts of Congress which seemed far-reaching in political effect, and which were deemed the especial offspring of a particular political party, have been held unconstitutional by judges belonging to that party. In the face of all this, a statement that every one of these justices will stand by his party when great party interests are at stake is discredibly reckless and intemperate.

Adding Cost of Stamp Tax to Express Charges.

The right of an express company to increase its charges by the amount of the stamp tax, so that the shipper, and not the carrier, is really compelled to pay the tax, has been much discussed during the past six months, and was recently decided in the affirmative by Judge Lacombe of the United States circuit court, in the case of *Crawford v. Hubbell*, reported in the "New York Law Journal" of November 11, 1898. The power of Congress to compel the carrier to bear the burden is not denied, but the judge does not find that this power has been exercised.

This is not in accord with the opinion of Judge Tuley of Chicago, in *People, ex rel. Western Steel Works, v. United States Express Co.* 5 Detroit Legal News, No. 21, 80 Chicago Legal News, 408, 16 National Corporation Reporter, 1231. In that case it was held that the express company, and not the shipper, must pay the tax, and, while the company had not in form attempted to raise its rates, the judge said that, if the demand upon the shipper for the cost of the stamp could be considered as such an attempt, it would not be upheld, as the power to raise its rates did not include the power to make an arbitrary and horizontal increase of rates without regard to the service performed.

Judge Tuley's opinion is approved by the Michigan supreme court in *Attorney General, ex rel. Moore, v. American Express Co.* 77 N. W. 817, sustaining a mandamus to compel the express company to furnish the revenue stamp.

Judge Lacombe disposed of the case of *Crawford v. Hubbell* in an oral opinion in order to avoid delay so that the case might be carried to the Supreme Court of the United States as rapidly as possible.

Duty to Heat Passenger Cars.

There ought not to be much question about the obligation of a railroad company to keep passenger cars sufficiently heated to prevent discomfort and danger to the health of passengers. But there are very few cases in which the question has been decided. In *Taylor v. Wabash R. Co. (Mo.)* 42 L. R. A. 110, it was held improper to take the case from the jury on the ground that, as matter of law, the carrier was not liable where the action was for illness of a passenger caused by riding in an uncomfortably cold car. This decision was rendered by Division 1 of the Missouri supreme court, but, after the case was transferred to the court in banc, it was dismissed because of the plaintiff's death. The meager authorities, which are collected in a note to this case, do not much differ. They all recognize the duty to heat the cars. The performance of this duty is regulated by the New York act of June, 1887, which prohibits the use of stoves in cars, and this statute is held constitutional even as applied to interstate trains. *New York, N. H. & H. R. Co. v. New York*, 165 U. S. 628, 41 L. ed. 858.

The duty to heat street cars properly may next be considered. It is a question of no small importance to people of northern cities in winter. The fact that street-car rides are of short duration may make the duty to heat such cars less imperative than the duty to heat ordinary railroad trains. But the difference seems to be merely one of degree. The street-car companies ought to be compelled to make their cars warm enough for ordinary people to ride in them without exposing their health to danger.

Preference of Telephone Operatives on Receivership.

The first decision that applies to a telephone company the recognized doctrine of railroad receiverships, whereby preference is given to operating expenses over a pre-existing mort-

gage, was made in the late case of *Keelyn v. Carolina Mutual Teleph. & Teleg. Co.* (C. C. S. D. S. C.) 90 Fed. Rep. 29. The theory on which such preference is given for the current expenses of a railroad is that railroads are property of a public nature discharging a great public work, and that public interest requires that they be kept in operation. In the present case Judge Simonton considers that the reason of this doctrine applies quite as strongly to a telegraph and telephone company. He says: "Like railroads, these lines are very important instruments of interstate commerce. They are the means of communication between all points on the globe. They are of the most essential importance to the government in time of war, and to the people in time of peace." Concerning the claims of the operators in this case, he says: "They clung to their positions and stood by the corporation in despite of failure to secure pay. They, at a great sacrifice, kept it a living concern. They enabled it to retain its list of subscribers so that when it was offered for sale, instead of being an abandoned wreck, it was in active daily operation. The claims of those who furnished supplies are by no means as strong as these." An order was made for the payment of the wages of the employees for the period of ninety days before the receiver's appointment.

Our Spirit and Purpose Toward Dependent Peoples.

The idea that the American people are grabbing the Philippines as plunder seems to have got firmly fixed in the minds of some of our own people. They assail the motives as well as the judgment of the majority of their fellow citizens. This attitude of superior righteousness as well as superior wisdom is characteristic of some really honest and intelligent people; but it weakens their influence and cankers their judgment. Unmixed motives exist in the best of men but rarely; in a nation never. But the dominant purpose of this nation to-day toward the Philippines is rightly to discharge the obligation imposed upon it. The man, however learned and intellectual, who can see nothing but greed of gain and conquest in the minds of his fellow countrymen, may well fear that the defect is in himself. The great body of thoughtful Americans wish to know what ought to be done, not to have their motives misrepresented and denounced. The distinct purpose of the United States toward these dependent outside peoples

must be to give them self government as fast as and as far as they are capable of exercising it. Failure to do this would indeed justify the offensive imputations that are now made upon our national intentions. But the supposition that this free people will try to keep other peoples as "subjects" when they have become fit to govern themselves should be left to our enemies; an American ought to have more faith in his own nation.

Injury to Employee by Poisonous Germs.

The question of an employer's liability for poisonous germs causing injury to an employee was recently decided by the Kansas City court of appeals in *Hysell v. Swift & Co.* This was an action against the proprietor of a slaughtering and packing establishment for the loss of an eye of a workman caused by a poisonous yellow rust that he was cleaning from an iron rail. This rust formed by blood and other organic matter adhering to the rail contained bacteria that destroyed the eye. The workman was ignorant of the danger, and the contention was that the employer knew or ought to have known it. The court held that a master must keep up with scientific development and knowledge as it may affect the character of his business, and become informed of such scientific knowledge as men of general education and information possess relative to the danger and hazard of the business, and give due warning of the dangers to his employees. But it was held that the master was not liable in this case because the injury could not have been reasonably anticipated. In proof of this it was shown that, while this yellowish dust fell and settled over fifteen or sixteen other persons engaged in the service, it injured none of them.

The principle of the decision is doubtless the true one, whether it is rightly applied to the facts or not. Not the possibility, but the reasonable probability, of danger, must be the basis of liability. The court, as an illustration, refers to the danger of putting persons to work with one who has tuberculosis. But if a person who has that disease in an advanced stage is put by an employer who knows the fact at work with others who do not know it, and they take the disease, there is much reason to urge his liability in the present state of knowledge as to the danger of that disease. The liability ultimately rests on two questions of fact: First, the knowledge of danger; second, the degree of the danger or the reasonable probability of injury.

Enforcement of the Interstate Commerce Act.

The impossibility of enforcing the Interstate Commerce Act as it now stands is emphatically stated in the Twelfth Annual Report of the Interstate Commerce Commission as follows:

"Until further and important legislation is enacted the best efforts at regulation must be feeble and disappointing . . .

"Meanwhile the situation has become intolerable both from the standpoint of the public and the carriers. Tariffs are disregarded, discriminations constantly occur, the price at which transportation can be obtained is fluctuating and uncertain. Railroad managers are distrustful of each other, and shippers all the while in doubt as to the rates secured by their competitors. The volume of traffic is so unusual as frequently to exceed the capacity of equipment; yet the contest for tonnage seems never relaxed. Enormous sums are spent in purchasing business, and secret rates accorded far below the standard of published charges. The general public gets little benefit from these reductions, for concessions are mainly confined to the heavier shippers. All this augments the advantages of large capital, and tends to the injury and often to the ruin of smaller dealers."

The demoralizing effect of widespread violations of law can hardly be overstated. There have been rumors of organized systems of unlawful business which relied for safety on secrecy of methods and records, as well as on the bribery of those who might discover their secrets. If the Interstate Commerce Act cannot be made effective, let it be repealed. The disgrace of unenforced laws ought not to be tolerated.

Judicial Opinions on Proposed Laws.

The submission of proposed laws to the supreme court to get its opinion as to their constitutionality has been advocated by many people as an important reform. It is obvious, of course, that much inconvenience and some hardships often result from the overthrow of statutes after they have been acted upon. The avoidance of these evils would be very desirable. Why, then, these people ask, should an unconstitutional provision not be declared so before its enactment, and not after it has been acted upon? Like many another invention, this plan involves more than its authors con-

sider. As the court said in *Re Construction of Constitutional Provision* (S. D.) 10 L. R. A. 575, the judges in such case must act "both as court and counsel upon *ex parte* proceedings." The inestimable aid given in the determination of hard questions by the opposing arguments of counsel in actual litigation could not be had when giving advisory opinions about prospective legislation. This is the weak spot in the system, and it is not sufficiently appreciated by advocates of the proposed reform. They seem to assume that judges must be always ready to express final opinions on all legal questions without hesitation, just as the average client expects his attorney to know all the law offhand. The right of the legislature, or of the executive, or of both, to demand such opinions from the supreme court, is in fact created by the Constitutions of several states. The practical operation of the system may not have been sufficient to prove very much for or against it in most states. Doubtless the opinion of the court has in some cases prevented the enactment of invalid statutes, but in a case of real difficulty the opinion of the court given in advance of any litigation, and without opposing argument of counsel, can hardly be satisfactory. The plan is well characterized by the clear-headed editor of the "New York Law Journal," who says, "Superficially the idea is a taking one."

Confiscation Checked.

No more righteous decision, and none more needed for the protection of property rights, was ever rendered by the Supreme Court of the United States than that just handed down in the case of the Village of Norwood v. Baker. Assessments by the front foot levied without regard to special benefits on the abutting land, for the total value of a strip taken for a highway, and also for the expense of the proceeding, are declared unconstitutional as a taking of private property for public use without just compensation, and therefore a deprivation of property without due process of law. The court clearly lays down the broad and righteous doctrine that assessments for public improvements in substantial excess of the special benefits received are unconstitutional. Sheer confiscation under the guise of public improvements has become common. Humble owners of small lots in the suburbs of a city or town have found

themselves powerless to prevent an ordinance for paving their street and levying assessments therefor which wellnigh or altogether confiscate their lots. There have been cases, indeed, in which the legal authorities, including courts, which purport to do justice, have perpetrated the unparalleled atrocity of imposing upon the unfortunate people who have been robbed of their abutting lots a personal liability for the excess of the assessments over the value of the lots. This constitutes an iniquitous and impudent defiance of all constitutional rights. People living on a modest street, with little need of a pavement, and less ability to pay for it, have been compelled to submit to have the pavement made and then to have their property sold to pay the assessments for it, merely because the pavement was demanded for the benefit of the business portion of the town or for the profit of paving companies.

The assumption that special benefits to abutting lots must necessarily equal the total cost of a street pavement is at the bottom of all these front-foot assessments. But that assumption is gratuitous and false. The assessment may, and sometimes does, equal, and even exceed, the sum total of special benefits and the entire original value of the lot in addition. Such unconstitutional outrages could never flourish long if perpetrated on men who were able to fight for their rights. But they have usually fallen upon humble people who had bought low-priced lots in the mistaken faith that their property rights would be protected. This rank system of official robbery that has flourished through the tyranny or corruption of the municipal officers must now face the doctrine of the United States Supreme Court, that assessments for public improvements in substantial excess of special benefits are unconstitutional. On that judicial rock this system of confiscation by assessment must split. The true rule is plain. Assessments must be limited to special benefits received. If the benefits to the property to be assessed are less than the cost of the improvement, the balance of the cost must be paid by the general public.

Discrimination in Favor of Resident Creditors of Corporations.

Persons who deal with corporations may find an unusually far-reaching and important decision in *Blake v. McClung*, just decided by the Supreme Court of the United States. It

holds that a state statute giving to residents of that state a priority over nonresidents in the distribution of the assets of a foreign corporation which, by filing its charter or articles of association in the state, is deemed a corporation of that state, is in violation of the constitutional guaranty of equal privileges and immunities of citizens, so far as it discriminates against citizens of other states. But it is held that such discrimination may be valid as against creditor corporations of other states, since they are not citizens within the constitutional guaranty of privileges and immunities. The claim that such nonresident creditor corporations were thereby denied the equal protection of the laws is met by saying that unless they are doing business within the state so as to be subject to process therein they are not within its jurisdiction so as to be entitled to the equal protection of the laws. Two justices dissented and contended that the statute only amounts to requiring a foreign corporation, as a condition of doing business in the state, to give to the residents thereof a prior security on the assets of the company therein. The dissenting opinion points out that in *Fritts v. Palmer*, 132 U. S. 283, 33 L. ed. 317, a Colorado statute was involved which provided that a mortgage given by a foreign corporation on property in the state for a debt created in another state should not take effect as against persons in that state until the liabilities of the corporation due to them at the time when the mortgage was recorded were paid, and that this statute was conceded by all parties to be constitutional, and was expressly declared so by the court. The language of the court in that case was plainly inconsistent with the present decision, but it must be regarded as an *obiter dictum* rather than a decision.

The present decision suggests some questions of great importance that it does not answer, respecting the constitutionality of discriminations against nonresidents in the matter of attachments upon the property of insolvents. It is shown in the note to *Long v. Forest*, 28 L. R. A. 33, that many such cases have given preference to domestic creditors. In its logical effect the present decision seems to deny the constitutionality of any discrimination between domestic creditors and other citizens of the United States in the distribution of an insolvent's estate. Upholding attachments of the former, but rejecting those of the latter, would seem to violate the principle now established.

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Among the New Decisions.

Appeal.

The sufficiency of merely constructive notice of a writ of error given by the records of the court, as a substitute for personal service, is sustained in State, *ex rel. Andreu, v. Canfield* (Fla.) 42 L. R. A. 72. The claim was that this did not constitute due process of law, but the court held that the writ of error was not a new and original suit, and therefore did not require the same strictness of service that was necessary in bringing a new suit.

Bigamy.

Persons living together ostensibly as husband and wife, although illicit relations have ceased because of physical incapacity, are held, in *Cox v. State* (Ala.) 41 L. R. A. 760, to be cohabiting within the meaning of a statute against bigamy, as the law intended to prevent the public scandal and disgrace attendant upon an appearance of such illicit relations.

Bills and Notes.

A condition on the delivery of a note to the payee or his agent, that it shall take effect only when signed by another person, is held, in *Hurt v. Ford* (Mo.) 41 L. R. A. 823, ineffectual, but the delivery is deemed absolute.

Building and Loan Associations.

Paid-up stock not being authorized by the Illinois statute governing building associations, it is held, in *Rhodes v. Missouri Savings & L. Asso.* (Ill.) 42 L. R. A. 93, that such stock cannot be issued in that state by a foreign corporation.

Buildings.

Mere advertisers who place advertisements upon a signboard set up upon the roof of a building, by virtue of what is called a lease of part of the roof, but which does not give them possession of any part of the building, although they are required to keep in repair the portion of roof which they use, are held, in *Reynolds v. Van Beuren* (N. Y.) 42 L. R. A. 129, to be mere licensees who are not liable to a stranger for the falling of the signboard from the building during a high wind.

Claims.

The word "claim" in a statute respecting actions against the state is held, in *Northwestern & P. H. Bank v. State* (Wash.) 42 L. R. A. 33, to be equivalent to "cause of action," and therefore to include an action contesting the priority of a lien in favor of the state.

The unnecessary destruction of healthy and valuable cows by state officials, who suppose them to be diseased, after applying the so-called tuberculin test, is held, in *Houston v. State* (Wis.) 42 L. R. A. 39, to give the owner no claim against the state, within the meaning of statutes relating to claims, as that does not include demands based upon unlawful and tortious acts.

Contracts.

The illegality of a contract between the owners of tugs, to monopolize the business, is held, in *Scott v. Wiswall* (C. C. App. 2d C.) 42 L. R. A. 85, insufficient to prevent recovery by one of the tugs on an entirely distinct contract for towage. This clearly presents the distinction between actions upon illegal contracts and those which do not grow out of that contract.

Copyright.

A lease of the reference books of a mercantile agency to subscribers, retaining title and providing that the books shall be returned when the subscription expires, is held, in *Jewelers' Mercantile Agency v. Jewelers' Weekly Pub. Co.* (N. Y.) 41 L. R. A. 846, to constitute a publication which will defeat a common-law copyright.

Courts.

A judge who owns real estate in a city, that is taxable for the city's bonded indebtedness, is held, in *Meyer v. San Diego* (Cal.) 41 L. R. A. 762, to be disqualified to sit on a contest of the validity of a contract which will involve the creation of a bonded debt of the city to a large amount, necessitating a special tax for forty years.

Death.

The loss of the services of a minor child killed by the fault of another is held, in *Gulf, C. & S. F. R. Co. v. Beall* (Tex.) 41 L. R. A. 807, to give the parents no common-law right of action against the party in fault. There has been a difference of authorities on this question, the preponderance of which supports the present decision, but the cases which reach this conclusion do so on different grounds, as appears from the note to this case.

Eminent Domain.

On the condemnation of land which is subject to an inchoate right of dower, it is held, in *Flynn v. Flynn* (Mass.) 42 L. R. A. 98, that the wife has no such interest as will entitle her to have any part of the money paid to her or set aside for her benefit on the contingency of her surviving her husband.

Evidence.

An attempt to procure false testimony or to corrupt jurors is held, in *McHugh v. McHugh* (Pa.) 41 L. R. A. 805, to be provable for the purpose of raising a presumption against the guilty party, even if such party is an executrix, but is personally interested in the litigation.

The presumption of a carrier's negligence in case of injury to a passenger is upheld in *Whalen v. Consolidated Traction Co.* (N. J.) 41 L. R. A. 836, where a passenger on a trolley car was thrown off from the running board, upon which he stood, by the conductor's stumbling against him, though the cause of the stumbling was not shown.

Statements by an injured person to show his own contributory negligence, though made after the injury, are held, in *Helman v. Pittsburg, C. C. & St. L. R. Co.* (Ohio) 41 L. R. A.

860, to be admissible in an action brought after his death by an administrator for the injury causing his death.

Fences.

The liability of a landowner for the defective condition of that part of a division fence which, by agreement, the other proprietor was required to keep in repair, is denied in *Quinn v. Crimmings* (Mass.) 42 L. R. A. 101.

Gift.

A delivery to a donee of a deposit book of a savings bank containing entries of deposits to the donor's credit, when accompanied with appropriate words of gift, is held, in *Polley v. Hicks* (Ohio) 41 L. R. A. 868, sufficient delivery to constitute a valid gift, without any written transfer.

Hacks.

A grant of the exclusive privilege of entering station grounds to solicit passengers or baggage is held valid in New York, *N. H. & H. R. Co. v. Scovill* (Conn.) 43 L. R. A. 157, if its terms are not inconsistent with the reasonable accommodation of the public.

Husband and Wife.

A woman who learned on the day of her marriage, soon after the ceremony, that her husband was constitutionally afflicted with syphilis, and in a state in which his chances of cure were very remote, and thereupon refused to live with him as his wife, was held, in *Smith v. Smith* (Mass.) 41 L. R. A. 800, entitled to an annulment of the marriage on the ground of fraud.

The communication of syphilis to a wife by her husband, who has the disease in the tertiary stage, and is probably incurable, is held, in *McMahan v. McMahan* (Pa.) 41 L. R. A. 802, to entitle her to a divorce for cruel and barbarous treatment, endangering her life, or rendering her condition intolerable and life burdensome.

Incompetent Persons.

The fact that the mortgagor or occupant of mortgaged premises has become insane is

held, in *Lundberg v. Davidson* (Minn.) 43 L. R. A. 108, insufficient to suspend the power of sale in the mortgage.

Injunction.

An injunction against the institution of prosecutions for criminal offenses, whether for violation of state statutes or municipal ordinances, is denied in *Paulk v. Sycamore* (Ga.) 41 L. R. A. 772, even if the constitutionality of the statute, or the validity or reasonableness of the ordinance, is denied.

Insurance.

Insurance of a lessor's interest in premises on which the lessee also has procured insurance for the lessor's benefit, as his lease required him to do, is held, in *Sun Insurance Office v. Varble* (Ky.) 41 L. R. A. 792, valid as to that part of the loss which remains after the application of the policies taken by the lessee, where they fail to cover the whole loss because of a stipulation for prorating.

The receipt by an agent from his insurance company, of a policy to be unconditionally delivered to the applicant, is held, in *New York Life Ins. Co. v. Babcock* (Ga.) 43 L. R. A. 99, to be equivalent to a delivery to the insured himself under a contract making delivery essential to its validity.

A provision that a life insurance policy shall not take effect until the payment of the first premium is held, in *Stewart v. Union Mut. L. Ins. Co.* (N. Y.) 43 L. R. A. 147, not to defeat the insurance, where a note for the premium was accepted and, at its maturity, a check taken, with the understanding that it would be satisfactory if it was paid the next week, although the insured died before the check was paid.

Justice of the Peace.

The exclusion of the justices of the peace of a single town from the exercise of any criminal jurisdiction is held, in *People, ex rel. Burby, v. Howland* (N. Y.) 41 L. R. A. 888, to be in violation of a constitutional provision for justices of the peace, without expressly stating what a justice of the peace shall be. This is on the ground that criminal jurisdiction has always belonged to those courts, and a local statute denying its exercise is equivalent to a partial abolition of the office.

Landlord and Tenant.

Condemnation of leased premises, without actual eviction, is held, in *Rhode Island Hospital Trust Co. v. Hayden* (R. I.) 42 L. R. A. 107, insufficient to relieve the tenant from liability.

Negligence.

The doctrine which holds railroad companies liable for injuries to children playing on turntables which are left unguarded is denied in *Delaware, L. & W. R. Co. v. Reich* (N. J.) 41 L. R. A. 831. The conflicting decisions on this subject are reviewed by the court.

Poor and Poor Laws.

The liability of the estate of a lunatic who has been supported by the county as a pauper is maintained in *McNairy County v. McCain* (Tenn.) 41 L. R. A. 862, in an action by the county for indemnity. But in *Albany v. McNamara* (N. Y.) 6 L. R. A. 212, it was held that a supposed pauper aided by the county was not liable to repay the expenditure, at least in the absence of some application or request for assistance other than the usual solicitation for charity made to the poor authorities.

Proximate Cause.

Negligence in storing oil upon a station platform in violation of statute is held, in *Stone v. Boston & A. R. Co.* (Mass.) 41 L. R. A. 794, not to be the proximate cause of damage by fire caused by the dropping of a match by a person delivering goods at the depot, and who is not employed by the carrier.

Receivers.

The discretion of a receiver in respect to details in the management of a street railroad is held, in *Morley v. Snow* (Mich.) 41 L. R. A. 817, to extend to the adoption of metal safes for receiving fares, into which the passengers are required to put the fare, while the conductor presses a button which rings a bell and registers the fare.

Reward.

The offer of a reward for "the arrest and conviction" of an unknown perpetrator of a crime is construed, in *Haskell v. Davidson* (Me.) 42 L. R. A. 155, so as to entitle a person to the reward when he obtains the facts to secure the arrest and conviction, without personally making the arrest.

Set-Off.

A set-off of judgments was refused in *Cleveland v. McCanna* (N. D.) 41 L. R. A. 852, where one judgment was claimed as exempt, and the set-off would defeat the exemption laws.

Statutes.

A statute which, although expressed in general terms, enumerates restrictions which constitute identification, rather than classification, and is applicable only to a single highway improvement, is held, in *Re Henneberger* (N. Y.) 42 L. R. A. 182, to be in violation of a constitutional provision against local laws.

The grant by a city to a subway company, of the right to lay wires and construct its subway under the surface of streets, is sustained in *State, ex rel. National Subway Company, v. St. Louis* (Mo.) 42 L. R. A. 113, which substantially overrules a former decision.

Sunday.

Statutes making it unlawful to play baseball on Sunday are held constitutional in *State v. Powell* (Ohio) 41 L. R. A. 854.

Trusts.

A provision in a law creating a trust, authorizing beneficiaries to remove the trustee and appoint another without aid of the courts, for what they deem good and sufficient cause, is upheld in *May v. May* (D. C. App.) 41 L. R. A. 767, although it is held that such power must not be exercised wantonly, capriciously, or arbitrarily. The point seems to be quite unusual.

The necessity of examining the trust instrument itself, on taking a pledge of shares of stock from a trustee at the request of one who

claimed to be the sole beneficiary, is declared in *First National Bank v. National Broadway Bank* (N. Y.) 42 L. R. A. 139. The right of the beneficiary to alienate an interest in the trust property is sustained on the ground that it depends on the law of another state in which the trust was created, although such alienation is expressly prohibited by the laws of the forum where the beneficiary resides.

Waters.

The discharge of mineral water from an artesian well after use in a public bath house by persons afflicted with infectious, syphilitic, or other disorders, through a tile drain or otherwise, into a stream which constitutes the only available drainage without building a very costly sewer, is held, in *Barnard v. Shirley* (Ind.) 41 L. R. A. 737, to be lawful. This materially limits a former decision of the court. This right to discharge waters from an artesian well is a novel one.

Wills.

The intention to make no provision for a child already born is held, in *Carpenter v. Snow* (Mich.) 41 L. R. A. 820, not necessary to be shown by the will itself, under a statute giving the child a right to share as in case of intestacy, if it appears that the omission was not intentional. But as to a child afterwards born the statute provides that such intention must "be apparent from the will," and this is not shown by merely giving all testator's property to his wife.

The word "stock" in a bequest of "all my notes, bonds, stock, and money on hand," is held, in *Capehart v. Burrus* (N. C.) 42 L. R. A. 152, not to include live stock, such as horses and mules, although the testator owned live stock, but no stock securities, when he died, or when the will was written.

Recent Articles in Law Journals and Reviews.

"Proof of Character by Personal Knowledge or Opinion: Its History."—33 *Law Journal*, 594.

"Absolute Deed of a Homestead as a Mortgage."—47 *Central Law Journal*, 463.

"The Guardian Ad Litem."—4 *Western Reserve Law Journal*, 178.

"The Scintilla Rule—A Symposium."—4 *Western Reserve Law Journal*, 169.

"Uniform State Laws."—6 *American Lawyer*, 453.

"Unveiling of the Statute of Rufus Choate."—6 *American Lawyer*, 451.

"Proposed Changes in the Law of Expert Testimony."—6 *American Lawyer*, 445.

"Shooting at Escaping Convicts."—20 *Australian Law Times*, 76.

"The Degree of Proof Necessary when Crime is Charged in a Civil Action."—47 *Central Law Journal*, 482.

"A Proposed New Definition of a Tort."—12 *Harvard Law Review*, 335.

"Massachusetts as a Philanthropic Robber."—12 *Harvard Law Review*, 316.

"Constitutional Aspects of Annexation."—12 *Harvard Law Review*, 291.

"The Beginnings of Civil Service Reform."—8 *Yale Law Journal*, 134.

"The Causes and Results of Our War with Spain from a Legal Standpoint."—8 *Yale Law Journal*, 119.

"Corporations under Bankruptcy Act of 1898."—8 *Yale Law Journal*, 105.

"Vexatious Actions and Pleadings."—18 *Canadian Law Times*, 251.

"Arrest of Absconding Debtors."—18 *Canadian Law Times*, 241.

"The King's Justice in the Early Middle Ages."—12 *Harvard Law Review*, 227.

"Unfair Competition by the Deceptive Use of One's Own Name."—12 *Harvard Law Review*, 248.

"Powers Coupled with an Interest."—12 *Harvard Law Review*, 262.

New Books.

"Annual Digest of Decisions of All Federal Courts and of the Commissioner of Patents, Relating to Patents, Trademarks, Labels, and Copyrights for 1898." By Louis M. Sanders. (A. E. Robinson, 87 Nassau St., New York.) 1 Vol. \$3.

"Our Treaty with Spain." Annotated by Charles Henry Butler. (Washington Law Book Co., Washington, D. C.) Paper, .25.

"Rules, Orders, and Forms in Bankruptcy Adopted by the Supreme Court of the United States." Printed at Government Printing Office. (Washington Law Book Co.) 1 Vol. Paper, \$1.

"Law and Practice in Bankruptcy." By Untermeyer & Kelley. With Forms, Annotations, and Rules of Court. (Diossy Law Book Co., New York.) 1 Vol. \$8.50.

"Collier's Rules and Forms in Bankruptcy." Containing Official Rules, Official Forms, and United States Equity Rules. (Matthew Bender, Albany, N. Y.) 1 Vol. \$1.50.

"Illinois Criminal Law and Practice." By Ossian Cameron. (E. B. Myers & Co., Chicago, Ill.) 1 Vol. \$5.50.

"Halner's Modern Law of Municipal Securities." (The Bowen Merrill Co., Indianapolis, Ind.) 1 Vol. \$6.

"Robinson's Indiana County and Township Officers." 2d ed. (The Bowen-Merrill Co.) 1 Vol. \$6.

"United States Court of Claims Reports." Vol. 33. (L. C. P. Co., Rochester, N. Y.) \$2.

"The National Bankruptcy Law." Address before the Commercial Club of Kansas City, Missouri, by Alexander New.

"Annotated United States War Revenue Law." With Treasury Department Rulings. By Carmody & Peasley. (Dissell Publishing Co., Waterbury, Conn.) 1 Vol. 600 pages, \$2.50. Cloth, \$3.

The Humorous Side.

AN IMPOSSIBLE POSSIBILITY.—The foreman of a jury in a recent murder trial reported: "The probability, or even possibility, of this jury ever agreeing is impossible, in my opinion."

A BAD HABIT.—That suicide is a "pernicious habit that obviously tends to shorten life" is the defense set up by a life insurance company in a recent action on a policy which expressly excluded liability for such reprehensible habits. It must be conceded that suicide if it becomes habitual would have the tendency described.

NAMES OF LITIGANTS.—In an old Indiana case a man named Shallcross undertook to live up to his name by running an unlawful ferry, but the decision of the court said to him you "shall not cross."

The name of an adopted citizen of the Chickasaw nation, whose adoption was canceled and who was thereupon expelled, was "Run Hannah."

A California woman who said in her will, "I have no fear of the hereafter. O my

Lord, teach me to live right; then in dying there is no sting,"—bore the prophetic Christian name of "Euthanasia."

The name "Dr. Physick," which might be looked for in some allegory, appears as the name of a real person in a recent law report.

Some peculiarly suggestive combinations of names in the titles of cases are these:

People v. Kalsner; Priest v. Lackey; Kick v. Merry; Protected Home Circle v. Winter; Grant v. Lookout Mountain Co.

In reminiscences of the early Minnesota bar Judge Charles E. Flandrau tells in the "Minnesota Law Journal" of an argument before the supreme court in 1853 by Ex-Chief Justice Goodrich, on behalf of an Indian convicted of murder. The Indian's name was "Zu-al-za," but, as the counsel could not pronounce it, he always referred to him in his argument as "my client, Abasuerus."

WASN'T FEELING WELL.—A correspondent sends the following verbatim copy of an answer by a Georgia justice of the peace to a writ of certiorari:

"answer.

"to his honor, W. N. Spence, Judge:
"of the Superior Court of Decatur County, Georgia.

"sir, according to an order I Received from you from a Certiorari in answer to a case from my Court of the 1324th district G. M. case — vs. —. Trial Term on the 8th day of January, 1898, before a Jury answer to be made by the second Monday in May of the Superior Court May Term, 1898. Case tried on the 8th day of January, 1898, was — vs. —. Mortgage foreclosure for \$15 45, was tried that day before a Jury of 5 men as clever men as There is in the District and I thought that they done Justice to the Case and I think so yet. these same papers was Tried before me in this Court House in December Term, 1897. I will admit that there was moves in the trial to keep the papers from the Jury But I did not see how that they would be right for that was what the Defendant called for a Jury for was to seek his Rights. Defendant seem to want to keep all the money he could get hold of for he has not paid no costs on my side of the house yet Not even the costs of these papers And I would not of thought that the defendant would of keeping the note and mortgage foreclosure from the Jury when he appealed himself to the Jury. I will admit of my errors as the defendant has accused me of but I recon that there is not many of us but what does error sometimes &c And Judge Feeling that I have done the best that I could under the circumstances for I am Not feeling well to-day Nohow.

"And Judge I will assign officially as I assign all other papers.

"N. P. and Ex Officio J. P."

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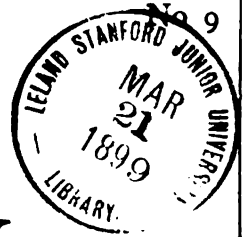
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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

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E. H. Lacombe.

Emile Henry Lacombe, United States circuit judge, second circuit, was born in the city of New York in 1846. As his name indicates, he is of French descent, his grandfather being a refugee from San Domingo, who settled in Philadelphia, and whose son, the judge's father, was one of the old merchants of New York. Judge Lacombe was educated at Columbia College Grammar School and at Columbia College, and was graduated in the class of 1863 with honors, fourth in his class. He subsequently took the two years' course at Columbia College Law School, in which the late Professor Dwight was then the instructor, and was graduated in 1865, taking a prize for an essay on constitutional law. Since he was only nineteen at this time, he could not be admitted to practice until 1867. Thereafter, with the exception of a brief experience as adjuster of marine averages, he continued in private practice until, in 1875, he entered the law department of the city of New York, when it was reorganized under William C. Whitney. His work there was arduous, and constant promotion testified to its efficiency. The contracts made during the rule of the Tweed ring were then coming due, and the financial officer of the city practically refused payment on all of them. For two or three years not a court day passed without the trial

of several city suits. Judge Lacombe had his share of the work. Some of the most important actions, involving complicated tabulations of figures, analyses of items of charge, and the collocation of seemingly unrelated facts, all tending to show fraud, were prepared for trial by him; and in the trial of many other causes he participated as assistant or as trial counsel.

In 1877 the city began largely to increase its holdings of the sources of water supply, and in the extensive litigation which ensued and the proceedings for condemnation Judge Lacombe had a prominent part. He drew the new aqueduct act of 1883, which has served as a model for subsequent legislation in the same field.

In May, 1884, he was appointed counsel to the corporation for the unfinished term of Judge George P. Andrews, and reappointed for a full term in January, 1885. He did not serve out his term, being appointed a United States circuit judge by President Cleveland in June, 1887. His first two years on the bench were mainly spent in clearing the court calendars of the large accumulation of untried actions for return of customs duties, in some of which the date of issue preceded the war. Experience in the despatch of business gained during his ten years' service in the law department enabled the new judge rapidly to reduce the trial list within reasonable limits. Since then he has been busily engaged, as are all the judges of that circuit, in the discharge of the usual judicial duties, and since 1891 he has sat as a judge of the United States circuit court of appeals for the second circuit. Judge Lacombe's judicial ability was rapidly recognized by the bar and the country at large. His eminence among Federal judges is quite out of proportion to the length of his service. In 1894 his old college conferred on him the degree of LL. D.

Voluntary or Compulsory Respect for Law.

A Texas correspondent agrees with "Case and Comment" that the widespread disrespect of law in this country is deplorable. But he thinks the patriotism of our people so great that they will obey "every just and reasonable demand from constituted authority." His remedy for the serious evil of disregarded laws is to get rid of foolish legislation. He says: "Make wholesome laws and we have an appreciative populace ready and willing to give glad obedience." All that he says about the American people may be true of the typical American. But who is ready to say that we have no criminal class in this country? The law against murder is surely a "wholesome" one, yet, notwithstanding the obedience gladly given to it by the great body of our citizens, the criminal classes make for the United States an annual record of homicides that horrifies the world. To remedy this fearful condition something more than the enactment of good laws is necessary. Those who will not give "glad obedience" must be taught to fear the penalty. Laws enforced will be respected. Those not enforced breed lawlessness. To cure the demoralizing disrespect of law we need, not spasmodic or sporadic crusades to enforce some special statute, but a clear, consistent, common-sense demand, by the whole people that every law shall be either enforced or repealed. Honor, justice, and self-respect demand that we free the law of all farces, pretense, and hypocrisy—that the law shall say only what it means, and do what it promises to do.

The Motive of the War.

Professor William G. Sumner writes in the January number of the "Yale Law Journal" on the "Conquest of the United States by Spain." This title fairly indicates the attitude of the writer. In his opinion this nation has been wrong in the whole matter, and now, by taking the Philippines, has entirely abandoned its principles and Constitution. On questions involving such a vast range of interests a wide difference of opinion, even among the ablest men, was inevitable. It was not strange that on the final vote in the Senate for the ratification of the treaty of peace senators from the same state and belonging to the same party found themselves opposing each other. The champions of either side had opponents wor-

thy of all respect for their ability and patriotism. Those to whom Professor Sumner is opposed were very largely in the majority, and among them are men whose great ability and high character will be freely conceded by all who are fair-minded and intelligent. It is, therefore, an unpleasant surprise to find him discussing these great national questions of extraordinary perplexity as if those who differ from himself were either imbecile or corrupt. His article is liberally sprinkled with such phrases as "national vanity," "national cupidity," "financial or political jobbery," "corruption of imperialism," "curbstone statesman," "unregenerate man," "grandiloquent speeches," and "sentimental drive." He is so sure that our statesmen who bore the tremendous responsibilities of the war with Spain could have had no thoughts above partisan trickery that he explicitly declares that "the original and prime cause of the war was that it was a move of partisan tactics in the strife of parties at Washington."

This is a gratuitous imputation of an infamous motive to statesmen of the highest character. It is a raw assertion unsupported by evidence and contradicted by common knowledge. Those who remember how the sympathy of our people for suffering Cuba had increased and intensified from year to year, until at last from East and West, North and South, Republicans and Democrats, boards of trade, and even from conventions of clergymen and organizations of women, there came an irresistible demand that in some way the long agony of Cuba should be ended, well know that this was "the original and prime cause of the war," and that any political move could have been at most only an attempt to take advantage of a movement which could not be restrained. Those who respect chivalrous impulses cannot believe that men like Theodore Roosevelt and General Wheeler, who left high places in the government to face death before Spanish guns, had in mind nothing higher than "a move of partisan tactics in the strife of parties at Washington." A belief that the great majority of American statesmen and of American citizens are dominated by a dishonorable and contemptible purpose must flourish chiefly among those who are saturated with suspicion of their fellowmen, those who are superciliously lonely in their own virtue, and those who possess that peculiar astuteness which can detect hypocrisy in all uprightness and a mean motive behind every human action.

Constitutionality of the Bankruptcy Act.

If the new bankruptcy law, for which the business of the country has waited long, with hope deferred, should prove to be unconstitutional, the disappointment would be great. Doubt of its constitutionality is suggested by the "Harvard Law Review," Vol. 12, p. 272, by saying that the exemption of wage earners and farmers from the provision for involuntary bankruptcy seems on its face "to create special privileges in special classes, the unconstitutionality of which may invalidate the entire law." But it adds: "Doubtless the Supreme Court of the United States will not overthrow the act lightly, and may find a reason for the exemption of wage earners and farmers other than a desire to give them special privileges as such." The provision of the Federal Constitution which this law can be said to violate if it does give a special privilege is not pointed out. In fact, there seems to be no provision of that Constitution which is applicable to the case. The grant of power is, indeed, to establish "uniform laws on the subject of bankruptcies throughout the United States." But the word "uniform" was probably intended to mean merely that the laws should be the same in all the states, and not that they must make exactly the same provisions for all persons. It was so construed in *Re Silverman*, 2 Abb. U. S. 248, where it is said: "Congress is given full power over the subject, with the one qualification, that its laws shall be uniform throughout the United States. Whether these laws shall apply to all fraudulent or insolvent debtors, or only to such as are engaged in trade, is committed by the Constitution to the wisdom and discretion of the law-making power."

Certainly the word "uniform" has never been construed to prevent discrimination between classes of persons, although prior bankruptcy laws have made some discriminations by provisions which were not universally applicable. Aside from the effect of this word "uniform" the only constitutional provisions that readily suggest themselves as having any bearing on the subject are those respecting equality of privileges, immunities, and protection. But none of these provisions have any application to acts of Congress. The 14th Amendment, by its express terms, refers only to state laws, and the provision of art. 4, § 2, which declares that "the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states," al-

though it is not in terms limited to state laws, is in effect so limited, as it is said in *United States v. Harris*, 106 U. S. 639, 27 L. ed. 295: "This section, like the 14th Amendment, is directed against state action. Its object is to place the citizens of each state upon the same footing with citizens of other states and inhibit discriminative legislation against them by other states." It is certain, therefore, that the constitutional guarantees of equal privileges, immunities, and protection have no application whatever to the subject. It is almost as certain that the word "uniform" in the constitutional grant of power has no reference to discrimination between classes of persons, but refers only to uniformity throughout the country. No other provisions of the Constitution seem to furnish any suggestion of a limitation on the power of Congress in this respect.

Public Policy and Incontestable Insurance.

The feature of incontestability in modern life insurance policies, by which life insurance business has been greatly stimulated, has given rise to some interesting questions which are not fully settled yet. That the stipulation which makes such policies incontestable after a certain period is not against public policy, is decided in *Clement v. New York Life Ins. Co. (Tenn.)* 42 L. R. A. 247, and *Massachusetts Ben. L. Asso. v. Robinson (Ga.)* 42 L. R. A. 261, but the question whether public policy will sustain the incontestable clause against all possible defenses is not entirely settled. The cases on the subject, which are collected in a note to those above referred to, agree substantially in holding that defenses of concealment, misstatements, and fraud, as well as the defense of suicide, are cut off by the incontestable clause. But there is a conflict of the decisions as to the effect of this clause on the defense that the plaintiff has no insurable interest in the life of the person insured. In *Wright v. Mutual Ben. Life Asso.* 118 N. Y. 287, 6 L. R. A. 781, this defense also was held to be precluded by the incontestable clause. The defense of a fraudulent scheme to cheat the insurance company was most discussed, but it was explicitly held also that the insurer could not prove the lack of insurable interest of the beneficiary. The court held that the incontestable clause was in the nature of a statute of limitations, which required the insurance company to discover the defense within the period named or else be barred

from setting it up. On the other hand, there are two cases in which the lack of insurable interest has been set up to defeat the policy notwithstanding an incontestable clause. These are the *Clement* case, above named, and the case of *Manufacturers' L. Ins. Co. v. Anctil*, 28 Can. S. C. 103. In the *Clement* case the plaintiffs were transferees of the policy, and the court held that, while the incontestable clause applied to the original validity of the policy, it did not apply to any subsequent disposition of it, and that as to transferees who took the policy for a speculative purpose public morals and the public good required the defense to be sustained notwithstanding the stipulation that the policy should be incontestable. But in the *Canada* case, where the question was between the original beneficiary of the policy, who took it as a speculation, and the insurer, the court went the whole length of excluding wager policies entirely from the operation of the incontestable clause, on grounds of public policy, saying: "Private interests must give way before public interests. The stipulation itself is contrary to law and public order."

However stringent the incontestable clause of a policy may be made, it is, of course, like every other contract, subject to rules of public policy. Fraud and suicide, as well as wager policies, are against public policy. Is there any reason why the incontestable clause should not apply to all of these alike? There is one distinction which is material. That is in the danger of allowing one person to profit from the death of another in whose life he has no interest. When a person is insured for the benefit of near relatives or of creditors there is a presumption that the insurable interest of the beneficiaries is great enough to prevent danger of criminal acts to get the insurance. But that danger cannot be ignored when the beneficiaries have no insurable interest in the insured life. It is a serious question whether the *Canada* court is not entirely right in excluding wager policies entirely from the benefit of the incontestable clause.

The Law as to Political Committees.

The increasing recognition of political parties and their conventions and committees in legislation to regulate the nomination of candidates for office has given rise to legal questions that are somewhat new in the courts. The power of the committee of a

political party to make nominations by virtue of authority delegated to it by a political convention is upheld in *White v. Sanderson* (Minn.) 42 L. R. A. 231. The attempt of a political committee which called a convention to decide between contesting delegations and leave the convention itself no power in that matter was held ineffectual in *Stephenson v. Boards of Election Comrs.* (Mich.) 42 L. R. A. 214. The court said: "While it has doubtless been the common practice for chairmen of political committees to use the gavel to procure order and silence, to read the call, and then to ask the assembly its further will or pleasure, and put motions until a temporary chairman is chosen, we have not understood it to be the province of the chairman to do more, or so much even, if against the will of the assembly. Certainly we know of no rule of law authorizing it. The assembly is a law unto itself, and has uniformly been the judge of the qualifications of its own members, and its decision final." The same principle is more broadly stated in *Hutchinson v. Brown* (Cal.) 42 L. R. A. 232, by saying that the committee "has no right to forestall, or in any manner limit or curtail, the powers of the convention which it calls." Therefore it is held to be of no consequence what resolutions the executive committee chose to couple with its call for a party convention, as they were merely advisory, and, as advice, were worth just what the convention chose to rate them at. But the membership of a political committee is held, in *Kearns v. Howley* (Pa.) 42 L. R. A. 235, to be beyond the control or supervision of the court, as the committee is purely political and has no rights of property. Therefore the court refused to grant an injunction against adding names to the committee or striking names from it.

The result of the authorities and the reason of the matter agree in the conclusion that the courts may not interfere with the organization or membership of a purely political committee, but may consider the validity and effect of its acts as soon as those acts affect the validity of a nomination for office respecting which the court is required to decide.

Pendency of Suits in Both Federal and State Courts Within the Same State.

The question whether the courts of a state and of the United States sitting in the same district and having concurrent jurisdiction of the matters in controversy are courts of foreign

jurisdiction to each other, in respect to pleading in one of them the pendency of a prior action in the other, has been discussed in many cases, and the conclusions of the courts are in much conflict.

In the recent case of *Willson v. Milliken* (Ky.) 42 L. R. A. 449, the majority of the court held that such courts are not foreign to each other, and therefore that the pendency of an action in a Federal court after removal from a state court will abate an action subsequently brought in the state court, although it was held that the dismissal or discontinuance of the former suit, even after the plea in abatement was filed, would remove the objection, unless the later suit was brought for the purpose of vexation. But the doctrine that the courts are not foreign to each other, and that the pendency of an action in one will abate an action in the other, is vigorously contested by a dissenting opinion in the case. A note to this case collects the numerous authorities on the subject, and shows that they are far from harmonious. By far the larger number of the decisions support the doctrine of the dissenting judge, that actions may be brought in both courts at the same time, although in comparatively few of the cases was the question presented in its simplest form. In most of them some difference in the causes of action or in the parties was involved. Yet in a great number of cases there is either a decision or *dictum* in support of the theory that no plea of abatement will lie to any action in a state or Federal court because of the pendency of another suit in the other court. The United States Supreme Court declared this doctrine in *Gordon v. Gilfoil*, 99 U. S. 169, 25 L. ed. 883, but the majority opinion of the Kentucky court contends that the United States Supreme Court did not actually decide the question. A few cases in other Federal courts have vigorously contested that doctrine. The tendency of both state and Federal courts in recent years is doubtless toward greater harmony and comity. The ghost of states' rights no longer gets between them. To hold that they are foreign to each other, even when sitting in the same district and administering the same law, seems to imply a misfit adjustment of national and state courts to each other. There is something anomalous in permitting a plaintiff to bring two actions at the same time, on the same cause of action, against the same defendant, within the same judicial district. But most of the decisions and *dicta* support the right. If *Gordon v. Gilfoil* actually de-

cides the question, that, of course, is an end of the matter. But the causes of action there considered were not identical, and for this reason the court, if it chooses to do so, may feel at liberty to limit the doctrine there declared.

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Among the New Decisions.

Aliens.

A per diem tax on employers for each foreign-born, unnaturalized person in their employ, which may be deducted from the wages of the employee, is held, in *Juniata Limestone Co. v. Fagley* (Pa.) 42 L. R. A. 442, to be in violation of U. S. Const. 14th Amend., and also of the uniform rule of taxation required by the Pennsylvania Constitution.

Arrest.

The right to shoot at a person who is merely running away from an officer to escape from arrest for a misdemeanor is denied in *Brown v. Weaver* (Miss.) 42 L. R. A. 423, and, if the officer does shoot wrongfully, it is held to be an official act covered by his bond.

Attachment.

An attachment of intoxicating liquors shipped into a state for an unlawful purpose is held, in *Lanahan v. Bailey* (S. C.) 42 L. R. A. 297, to be invalid under the South Carolina dispensary law, by which any sale of such liquors is unlawful.

Banks.

The novel question whether a bank holding certificates of deposit issued by another bank is a depositor is decided in *State Savings Bank v. Foster* (Mich.) 42 L. R. A. 404, holding that, when such certificate does not represent any actual deposit, but only a credit on the books, against which checks or drafts may be drawn, the holder is not a depositor in the other bank within the meaning of a statute creating an individual liability of stockholders to the depositors.

Boycott.

To picket the premises of a person boycotted, in order to intercept his teamsters or to prevent persons going there to trade, is held unlawful in *Beck v. Railway Teamsters' Protective Union* (Mich.) 42 L. R. A. 407, on the ground that it is an act of intimidation and an unreasonable interference with the right of free trade.

Building and Loan Associations.

The inability of a building and loan association to comply with its contract is held, in *Southern Building & Loan Asso. v. Price* (Md.) 42 L. R. A. 206, to abrogate a condition of the payment of withdrawals, which required certain collections to be first made; and therefore an action in another state by one who had given proper notice of withdrawal was sustained without compliance with such condition.

Carriers.

Starting a train without waiting for a passenger to reach a seat after entering the vehicle is held, in *Louisville & N. R. Co. v. Hale* (Ky.) 42 L. R. A. 293, to give no cause of action to a passenger who is injured thereby, unless there was some other reason for waiting than the fact that the passenger was a fleshy woman encumbered with a number of children,—at least when she had an escort with her.

Conflict of Laws.

The courts have been in conflict as to the right to bring action in another state to enforce the liability of a stockholder in a Kan-

gas corporation, but the authorities which support the right are reinforced by the recent decision in *Hancock Nat. Bank v. Ellis* (Mass.) 43 L. R. A. 896, holding that the right of action to enforce the liability created by the Kansas statute is transitory.

Constitutional Law.

See also *ALIENS*.

The claim of the infringement of a constitutional right to sell intoxicating liquors by a dispensary law is rejected in *Plumb v. Christie* (Ga.) 42 L. R. A. 181, where the dispensary act is applicable to a particular county.

Contracts.

A statute modifying the remedy by attachment, so that an attachment will be dissolved by a general assignment of the defendant for creditors within ten days thereafter, is held, in *Peninsular Lead & C. Works v. Union Oil & P. Co.* (Wis.) 42 L. R. A. 381, to be unconstitutional as applied to contracts made when the right of attachment was absolute or was not subject to this contingency.

Employment to procure the passage of ordinances for paving streets and alleys at a compensation which is in part contingent upon success in obtaining the necessary ordinances and securing the contracts is held, in *Crichfield v. Bermudez Asphalt Paving Co.* (Ill.) 42 L. R. A. 847, to be void on grounds of public policy because tending to bribery and corruption.

A promissory note payable six months after date if the promisor was elected to a certain office is held, in *Specht v. Beindorff* (Neb.) 42 L. R. A. 429, to be lacking in the certainty necessary for a negotiable instrument, and also void on grounds of public policy as a wager on the result of the election.

Costs.

An order staying all further proceedings in an action until the costs of an appeal are paid is held, in *Knee v. Baltimore City Pass. R. Co.* (Md.) 42 L. R. A. 368, to be consistent with the constitutional guaranties of right to trial by jury and to have justice freely, without sale.

Criminal Law.

The power of a judge to suspend the execution of a sentence imposed in a criminal case

is denied in *Neal v. State* (Ga.) 42 L. R. A. 190, and the words suspending the sentence are held surplusage.

The loss of a reward for making an arrest, caused by false representations, under which another person got a telephone communication and himself caused the arrest and obtained the reward, is held, in *Smitha v. Gentry* (Ky.) 42 L. R. A. 802, to give no right of action against him, because the damages are too remote and contingent.

Evidence.

Evidence of the trailing of an alleged criminal with a bloodhound is held, in *Pedigo v. Com.* (Ky.) 42 L. R. A. 432, to be inadmissible unless it is proved that the dog by which it was done possessed the power of discrimination and acuteness of scent sufficient for the purpose, and it is insufficient to show that the dog belonged to a breed which possessed those qualities.

Exhibitions.

A proprietor of a public resort who employs an independent contractor to make a balloon ascension to attract visitors is held, in *Smith v. Benick* (Md.) 42 L. R. A. 277, not to be liable for an injury to a visitor by a pole which fell because of the negligence of the balloonist while he was endeavoring to raise the pole for use in inflating the balloon.

Fraud.

Misrepresentation by a proposed buyer to a commercial agency, respecting his financial condition, is held, in *Poska v. Stearns* (Neb.) 42 L. R. A. 427, insufficient ground for rescinding a sale made by one who relied on a report of the commercial agency, where that report included other matters beside the statement of the buyer.

Fright.

The authorities which deny a right of action for mere fright or nervous shock are reinforced by *Braun v. Craven* (Ill.) 42 L. R. A. 199, which was a case of fright resulting in St. Vitus' dance, caused by violent conduct of a landlord suddenly appearing at the door of a room in which a woman was packing goods for moving.

Garnishment.

Garnishment of insurance money due from a foreign corporation to a nonresident of the state, for a loss occurring in another state, is held, in *Swedish American Nat. Bank v. Blecker* (Minn.) 42 L. R. A. 268, to be invalid for lack of jurisdiction, as the debt has no situs in the state.

Grand Jury.

The presence of a stenographer for the state's attorney in the grand-jury room during the taking of the testimony of witnesses, and the taking and transcribing of such testimony in full, is held, in *State v. Brewster* (Vt.) 42 L. R. A. 444, insufficient to abate the indictment, in the absence of any statutory provision or any prejudice to the accused.

Highways.

An ordinance requiring abutting owners to keep sidewalks free from snow, as they are required to do almost everywhere, is held, in *State v. Jackman* (N. H.) 42 L. R. A. 438, to be unconstitutional as a taking of property for public use without just compensation. This is in conflict with the conclusions of the courts elsewhere.

Husband and Wife.

Marriage on the high seas, where there is no law regulating the matter, entered into by persons who went there with the avowed purpose of evading the laws of their residence, is held, in *Norman v. Norman* (Cal.) 42 L. R. A. 348, to be invalid.

Injunction.

The right of a wife to an injunction against her husband's entering her dwelling house and eating and sleeping there is granted in *Lyon v. Lyon* (Ga.) 42 L. R. A. 194, in a case in which she had a pending suit for divorce from him on the ground of cruelty and habitual intoxication.

Insurance.

Death resulting from hernia, which was caused by accident, is held, in *Atlanta Accident Association v. Alexander* (Ga.) 42 L. R. A. 186, to give a right of action on a policy

against accidents, although there was a provision against liability for injuries or death resulting from hernia or other disease.

A contract by an insurance agent to keep a person's property insured in his company is held, in *Ramspeck v. Patillo* (Ga.) 42 L. R. A. 197, to be invalid unless the company consents, because the agent cannot act in a double capacity, and this contract would require him to perform inconsistent duties and require the consent of both parties.

A provision that a life insurance policy shall be incontestable after one year is held, in *Clement v. New York Life Ins. Co.* (Tenn.) 42 L. R. A. 247, to be neither unreasonable nor contrary to public policy, but, while it is held applicable to fraud in procuring the policy, it is held inapplicable to the defense that the plaintiffs had procured the issue of the policy and its transfer to them as a speculation, and was therefore a gambling or wagering contract. With this case is an extensive note on incontestable life policies.

A policy omitting the usual suicide clause, and containing an "absolutely incontestable" clause, is held, in *Patterson v. Natural Premium Mut. L. Ins. Co.* (Wis.) 42 L. R. A. 253, to cover a case of death by suicide.

A stipulation that a life policy is incontestable after three years from date and the payment of three full yearly premiums is held, in *Massachusetts Ben. L. Assn. v. Robinson* (Ga.) 42 L. R. A. 261, to be valid and applicable to a defense based upon misrepresentations or warranties, whether fraudulent or otherwise.

A claim for death loss occurring after an assignment for creditors by an assessment life insurance company which had no capital stock and no accumulation of funds for losses, except such as it secured by assessments for losses, is held, in *Re Wisconsin Odd Fellows' Mut. L. Ins. Co.* (Wis.) 42 L. R. A. 300, not to be a debt which can be enforced against the estate in the hands of the assignee.

Judgment.

After-acquired lands are held, in *Moore v. Jordan* (N. C.) 42 L. R. A. 209, to be subject to the lien of previously docketed judgments, not according to the dates when they were docketed, but by *pro rata* application of the proceeds.

A suit for divorce brought by the husband, whose property is all within the jurisdiction of the court, although his wife fails to appear

or answer on personal service in another state, is held, in *Sprague v. Sprague* (Minn.) 42 L. R. A. 419, to give the court jurisdiction to decree alimony, although the wife is not personally served within the state.

Lien.

Contractors who do not personally labor or work upon a railroad are held, in *Little Rock, H. S. & T. R. Ry. v. Spencer* (Ark.) 42 L. R. A. 334, to have no right to a lien under a statute giving liens to mechanics, builders, artisans, workmen, laborers, or other persons who perform work or labor upon or furnish materials for a railroad.

Municipal Corporations.

A municipal corporation enforcing a valid ordinance for vaccination is held, in *Wyatt v. Rome* (Ga.) 42 L. R. A. 180, to be exercising a governmental function, and therefore not liable for any damages caused by impure vaccine matter.

An ordinance forbidding the business of collecting, storing, and dealing in rags within thickly settled portions of a city is held, in *Com. v. Hubley* (Mass.) 42 L. R. A. 408, to be not unreasonable or in excess of the police power of the city.

Negligence.

Failure to fence or otherwise guard an open excavation or pond is held, in *Stendal v. Boyd* (Minn.) 42 L. R. A. 288, to give no right of action against the landowner for injury to children coming thereon without right or invitation, although they are attracted by the excavation or pond.

Sale.

A consignment of property to one's own order, with directions to notify the purchaser thereof, and the sending of a draft with bill of lading attached, requiring payment thereof before the bill of lading shall be delivered, are held, in *Kentucky Refining Co. v. Globe Refining Co.* (Ky.) 42 L. R. A. 358, not to transfer the title to the property before the draft is actually paid and the bill of lading delivered, although the draft has been accepted.

Taxes.

A theosophical corporation is held, in *New England Theosophical Corp. v. Boston* (Mass.) 42 L. R. A. 281, to be neither a scientific, benevolent, nor charitable institution, within the meaning of a statute respecting taxation.

Patent rights granted by the United States for an invention are held, in *People, ex rel. Edison Elec. Illum. Co., v. Board of Assessors* (N. Y.) 42 L. R. A. 290, to be exempt from the taxing power of a state.

Trusts.

A trust created by a conveyance and reconveyance to the grantor of real estate for his own life, with power to receive rents and profits for his own benefit, and sell and otherwise dispose of the property without accounting for the proceeds, with remainder after his life estate to his daughters in case the property is not disposed of by him, is held, in *Scott v. Keane* (Md.) 42 L. R. A. 359, to be void in favor of his subsequent creditors.

Vaccination.

The first decision rendered by any court of last resort of the United States in full support of the police power to compel the vaccination of citizens is that of *Morris v. Columbus* (Ga.) 42 L. R. A. 175, which sustains the power to require all persons within the limits of the municipal corporation to submit to vaccination whenever an epidemic of smallpox is existing or may be reasonably apprehended.

View.

A view by the jury of the premises where a crime was committed is held, in *People v. Thorn* (N. Y.) 42 L. R. A. 368, to constitute no part of the trial, nor a taking of evidence; and therefore it is held lawful to permit the jury to make such view in the absence of the accused,—at least when he waives his right to be present. With this case is a very extensive note marshalling the authorities on the subject of view by jury, and showing that there are several different theories entertained by the courts.

Voters and Elections.

The power of the chairman of a political committee calling a convention to determine

the right of contesting delegations to vote in organizing the convention is denied in *Stephenson v. Boards of Election Comrs.* (Mich.) 42 L. R. A. 214, although he is acting under the direction of a majority of the committee.

A majority vote in favor of one of the candidates before a convention is held, in *Phillips v. Gallagher* (Minn.) 42 L. R. A. 222, to be subject to reconsideration by the convention, which may declare the ballot irregular and proceed to name another candidate in such manner as the majority may direct.

The right of a political convention to delegate its power to a committee for the nomination of candidates is sustained in *White v. Sanderson* (Minn.) 42 L. R. A. 231, and the certificates of nominations are held properly executed by the chairman and secretary of the committee.

The attempt of an executive committee to forestall the action of a party convention which it calls is held, in *Hutchinson v. Brown* (Cal.) 42 L. R. A. 232, to be ineffectual, and the violation of their pledges or the sacrifice of party interests by members of the convention in making a nomination or adopting a plan of fusion is held insufficient ground for refusing to file a certificate of nomination.

An injunction against adding names to a political committee or striking names therefrom is refused in *Kearns v. Howley* (Pa.) 42 L. R. A. 235, on the ground that the committee has no property rights. The fact that the law recognizes political parties and committees chosen at primary elections is not deemed sufficient to give the court any control over the acts of the committee.

A limitation of the right to a place on an official ballot to parties each of which cast at least 1 per cent of the entire vote at the preceding general election is held constitutional in State, *ex rel. Plimmer, v. Poston* (Ohio) 42 L. R. A. 237.

A similar statute requiring a party to have cast at least 2 per cent of the vote at the preceding election is sustained in State, *ex rel. Runge, v. Anderson* (Wis.) 42 L. R. A. 239. In this case the statute also refused to give a person nominated by two parties more than one place on the ballot, and this provision is upheld against the contention that it prevents a party from nominating the same persons that have been nominated by another party without losing its right of representation on the official ballot at the next election.

A statute providing that the number of votes

polled at the last general election by a political party shall be found by taking the average vote received by such candidates as were not indorsed by any other party is held, in *Higgins v. Berg* (Minn.) 42 L. R. A. 245, to be inapplicable where two parties separately nominated a duplicate ticket with all the candidates alike. In such case it is held that for the purpose of preparing the official ballot this computation may be made by any reasonable rule or method that is fair and practicable.

Waters.

A conveyance bound by a river is held, in *Goff v. Cogle* (Mich.) 42 L. R. A. 161, to give title to the middle of the main channel, so as to include islands lying between that and the shore, in the absence of anything to show that the islands belong to the government.

An unmeandered river of sufficient capacity to float logs, and down which logs are driven from time to time, is held, in *Willow River Club v. Wade* (Wis.) 42 L. R. A. 305, to be a public navigable stream.

Recent Articles in Law Journals and Reviews.

"Alteration of Negotiable Instruments."—4 *Western Reserve Law Journal*, 198.

"A Proposed New Definition of a Tort."—12 *Harvard Law Review*, 335.

"Massachusetts as a Philanthropic Robber."—12 *Harvard Law Review*, 316.

"Constitutional Aspects of Annexation."—12 *Harvard Law Review*, 291.

"Stockholder's Inspection of Corporate Books and Papers."—6 *New York Annotated Cases*, 58.

"Charging Third Party Defending with Costs."—6 *New York Annotated Cases*, 50.

"Opening Default."—6 *New York Annotated Cases*, 31.

"Summary Remedy of Client against Attorney."—6 *New York Annotated Cases*, 6.

"The Legal Effects of Mortgages and Pledges of Rents and Profits of Real Estate."—7 *American Lawyer*, 12.

"Law and Lawyers."—7 *American Lawyer*, 9.

"Manslaughter, Christian Science, and the Law."—7 *American Lawyer*, 5.

"Perpetuities."—15 *Law Quarterly Review*, 71.

"The Hare System, with Special Reference to Its Application in Tasmania."—15 *Law Quarterly Review*, 51.

"Penal Servitude: Its Past and Its Future."—15 *Law Quarterly Review*, 83.

"Continuous Voyages in Relation to Contraband of War: The Affair of the Gaelic in the Chino-Japanese War."—15 *Law Quarterly Review*, 24.

"Should Land Transfer Registries be Worked by Solicitors, or by Government?"—15 *Law Quarterly Review*, 15.

"The Revision Powers of the Court of Cassation."—15 *Law Quarterly Review*, 9.

"Extra-territorial Criminal Legislation of Canada."—19 *Canadian Law Times*, 1.

"Possession; Actual and Constructive in Law and Equity."—48 *Central Law Journal*, 51.

New Books.

"A Treatise on Bankruptcy." By Frank O. Loveland. (W. H. Anderson & Co., Cincinnati, Ohio.) 1 Vol. \$6.

"Bats' Ohio Statutes." New Edition. (W. H. Anderson & Co.) 8 Vols. \$12.

"Guide for Township Officers." By Judge W. M. Rockel. (W. H. Anderson & Co.) 1 Vol. \$4.

"Notaries Public, Guide." By John H. Simpson. Pocket Edition. (J. F. Gephert, Cleveland, Ohio.) 1 Vol. \$1.

"New York Annual Digest." By Willard S. Gibbons. (L. C. P. Co., Rochester, N. Y.) 1 Vol. \$5.

"Real Property Law of New York." With Comments. By Robert Ludlow Fowler. (Baker, Voorhis & Co., New York.) 1 Vol. \$6.

"Pollock & Maitland's History of English Law." New Edition. (Little, Brown & Co., Boston, Mass.) \$9.

"Law of Mines in Canada." By Macpherson & Clark (The Carswell Co., Limited, Toronto, Ont.) 1 Vol. \$20.

"Judicature Act of Ontario." With Rules of Practice and Procedure of the Supreme Court. With Notes. By Holmsted & Langton. (The Carswell Co., Limited.) 1 Vol. \$18. 2 Vols. \$19.

"Analyses of the Law of Evidence, Equity, Contracts, and Code Pleadings." (W. H. Anderson & Co.) \$1 each.

The Humorous Side.

HER JUDGMENT SUSTAINED.—In a divorce case where there was evidence that the wife called her husband "an old fool," the court says, "The record sustains the wife's judgment." And on another point also her conclusion was affirmed. She told him she would have been foolish to have married a man of his age who had no money, and the court says, "Again we think her judgment was correct."

A DISSECTING OPINION.—The types recently made a judge cite an authority as follows: "See dissecting opinion of Bramwell in *Osborn v. Gillette*, *supra*." He may have meant to say "dissenting" instead of "dissecting," but the typical dissenting opinion may be fairly called, not only a dissecting, but a scalping, a flaying, and a vivisection operation which the dissenter performs on his brethren.

EXHAUSTING OPINIONS.—The opinion of a New York lower court, as printed in a certain report, says in respect to the conclusions of a referee, "The report is so exhausting that the court could not improve on it." This is modest, of course, but judges do not always realize how exhausting their opinions are.

COMPLIMENTS TO THE COURT.—To the list of fervent compliments paid to the court by defeated attorneys the following may be added:

"I think our supreme court is a good legislative body. What do you think?"

"The court rejected the correct view in order to follow the d——d sentimentalism of a one-horse text-writer."

"It is one of the misfortunes of practising before courts of final resort that an argument presented on the facts shown by the record becomes of no value by a statement of facts manufactured by the court."

"JUST AS BUBBLES DO."—In a contest over the right to build a flume, plaintiffs promised to make it secure, "and, like the deacon's shay, * * * make it strongest in the weakest point." But the court said, "It is not the plaintiffs' flume, though, that this court thinks should be made strongest in its weakest point, but the proceeding by which they can alone obtain the right to build the flume. However, as far as they have gone, their case is truly like the deacon's shay,—it has collapsed entirely, and, like the deacon, they are on the rock, for they are out of court."

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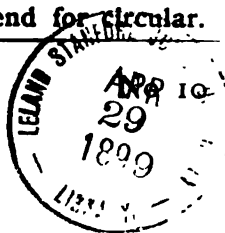
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Amos M. Thayer.

Among the distinguished judges whom western New York is proud to have furnished to other states and the nation is Judge Amos M. Thayer, of the United States Circuit Court of Appeals for the Eighth Circuit. Judge Thayer is a native of Chautauqua county, New York, where he was born October 10, 1841. He was educated in his native state, and was graduated from Hamilton College, at Clinton, N. Y., in June, 1862, receiving the philosophical honor. Immediately afterward (in July, 1862) he entered the Union army as lieutenant in the 112th New York Volunteers. In October, 1862, he was transferred to the United States signal corps, and served with that organization to the end of the war. He successively attained the rank of first lieutenant, brevet captain, and brevet major in the United States signal corps. On August 9, 1865, he resigned his commission. In February, 1866, he settled in St. Louis, Mo., where he still resides. He was admitted to the bar in the city of St. Louis on March 8, 1868. Eight and one-half years after his admission to the bar, that is, in November, 1876, he was elected judge of the circuit court of the city of St. Louis, constituting the eighth judicial circuit of the state. He was re-elected to the same office for a second term in November, 1882. After a little more than ten

years' service in the state court Judge Thayer was appointed on February 24, 1887, United States district judge for the eastern district of Missouri, and on August 9, 1894, was appointed United States circuit judge for the eighth judicial circuit, which office he still holds.

Judge Thayer has had in an exceptional degree a judicial career. For more than twenty-two years he has been continuously engaged in judicial service in the state and Federal courts. During the period of his service in the United States circuit court of appeals he has written more than 250 opinions.

The degree of LL. D. was conferred upon Judge Thayer in 1892 by Hamilton College, his alma mater.

Informing Accused of the Cause of Arrest.

There is some diversity of opinion as to the duties of an officer and as to the exact order of procedure in making an arrest for crime. In some states his duties in making an arrest are defined by statute, requiring him to inform the defendant that he acts under authority of a warrant, and also to show the warrant if required.

In the case of *State v. Taylor* (Vt.) 42 L. R. A. 673, in a note to which the authorities on the question are collated, it was held that the exhibition of a warrant or a statement of the grounds of arrest could not be demanded by the accused before submitting to the officer, although he might make such demand immediately after the arrest.

The general rule seems to be that on arresting a person who is caught in a criminal act or taken in hot pursuit, or when it is certain that he already knows the officer's pur-

pose, or prevents the officer from informing him thereof, it is not necessary for the officer to give information before making the arrest, but that in other cases the cause of arrest should be stated.

Another Rebuke to Injustice.

The highhanded and unprincipled robbery of citizens by means of arbitrary assessments has met with another needed rebuke from the Supreme Court of the United States in *Dewey v. Des Moines*, 172 U. S. —. In that case there was an attempt to impose upon a nonresident owner of real estate a personal liability for a street assessment levied on abutting property when the amount of the assessment exceeded the entire value of the property. The state statutes authorized the assessment, and provided for the personal liability of the owner of the property. But this decision holds that the statute is unconstitutional, and the assessment is an attempt to take property without due process of law, when the property owner is a nonresident. The case does not decide anything with respect to the validity of the statute as affecting residents of the state. But even as to them, when the question arises, the statute must be condemned as utterly repugnant to constitutional right and to the principles declared in the recent case of *Norwood v. Baker*, 172 U. S. 269. People have become so accustomed to the abuses of the system of local assessments that their sense of justice in respect to them has become calloused, and they have overlooked the fact of the repugnancy of many such assessments to constitutional guaranties. The decision in *Norwood v. Baker* is the beginning of a revolution in the matter of local assessments.

The Vilest of Libels.

A righteous man who does not swear must be moved by wellnigh irresistible impulse to use violent language when he reads in an American magazine, coupled with the statement that "an English judge cannot be bought at any price," the utterly infamous allegation that "in America judges and juries are bought at almost any price." This is the language of J. Alfred Kinghorn Jones in the March "Arena." Whether the maggot of suspicion has eaten out the soundness of his brain, or whether he knows the falseness of his damnable accusation, but makes it with

some venomously sensational purpose, is uncertain.

The integrity of the judges is best known to the lawyers who practise before them. Here in the east, at least (and we have no right to suppose that it is different in the west), a defeated lawyer, however exasperated by an adverse decision, and however sure he may be that it is unsound, almost never suspects that it could be due to corruption. That is the supreme proof. In the light of it this J. Alfred Kinghorn Jones, by his brazen insult to the courts, has pilloried himself.

Criminal Liability for Another's Acts.

The question of criminal or penal liability of a person for the criminal acts of an employee, partner, or other representative is one of conflict and difficulty. The authorities on the subject (which are collected in a note in 41 L. R. A. 650) are by no means uniform. It may be said to be a fairly general rule that one person shall not be liable in a criminal or penal proceeding for wrongful acts of others the commission of which he did not order, procure, or induce, or to which he was not an accessory. Yet this rule is by no means universal. The most common exceptions to it are those relating to the wrongful sales of intoxicating liquors. But there are other instances, like those of gaming or the maintenance of nuisances. In most cases where a person is held liable for criminal acts done by his servant or other representative without his knowledge or consent the offense is committed within the scope of the business committed to such representative, and is one which it seemed by no means unlikely that he might commit. It ought not to be the policy of the law to punish one person for the criminal act of another except when the former had some reason to expect its commission and some power to prevent it. But when a man puts another in charge of a business in the conduct of which there are peculiar opportunities and temptations to violate the law, it is not unreasonable to hold him responsible, even criminally, if the agent carries on the business unlawfully. The question of such liability is in the main a question of the intent of the statutes. They may be, and some of them are, so worded as to charge the proprietor beyond question with full responsibility—criminal as well as civil—for all the acts done in the course of his business by those whom he puts in charge of it.

The Death Penalty.

The unmistakable increase of sentiment against putting criminals to death seems likely to cause eventually the abolition of the death penalty, although a proposed law to that effect has been recently defeated in New York. There are many people who intemperately attack the existing law and declare that punishment by death is nothing less than legalized murder. They vehemently denounce it as *per se* barbarous and wicked under all circumstances. Such sentimentalists do not reason well. They ignore the fundamental law that gives society the right of self-defense, and therefore justifies any punishment of criminals that may be necessary to prevent crime. But the great question for reasoning men to decide respecting the death penalty is the question whether or not such a penalty is in fact necessary to prevent murder. If it is, the state should enforce it; if it is not, that penalty ought to be abolished. The Albany Law Journal of February 18, 1899, gives some facts as presented to a Massachusetts legislative committee by George L. Patterson of Cambridge, which indicate that the experiment of abolishing the death penalty in Michigan, Rhode Island, Wisconsin, Maine, Holland, and Portugal, has in every instance resulted, not in the increase, but in the decrease, of crime. If those statistics are reliable the argument for abolishing the death penalty is very strong. Certainly the state has no right to take the life of a citizen unless that extreme penalty is demanded for the public protection. But the whole question turns, not on any abstract theory of the sacredness of life, but on the practical necessity of capital punishment to protect the people against murder. If a careful investigation of the results of abolishing the death penalty in certain states and countries shall show that after a fair trial for a considerable time murders have not increased, the question would be substantially settled in favor of a more humane mode of punishment. But, on the other hand, if it should appear that murders increase when the death penalty is abolished, there would be no valid argument for its abolition.

Equal Rights of Women as Criminals.

A proposed law to exempt female murderers from capital punishment is fitly characterized by the New York Law Journal as "indefensible in principle and extremely

vicious in policy." It springs in part from a maudlin chivalry, and in part from the notion that women have not sufficient mental and moral development to be fully responsible for their crimes. Advocates of the political equality of women get into a deliciously absurd position when they demand an exemption of female criminals from the punishment that they would suffer if they were men.

Using Pardons to Abrogate Law.

A persistent but futile attempt was recently made to get Governor Roosevelt to annul a law of the state of New York under the guise of exercising the pardoning power when there was no legitimate basis for its exercise. The New York statute expressly declares that the punishment for murder in the first degree shall be death, and makes no exception of women. Yet people who do not like the law made a determined effort to get Governor Roosevelt to override it by sparing the life of a murderess merely because of her sex. The plainly declared purpose was to get him to annul the law so far as it applies to women. But the governor could not yield to this demand without a misuse, if not a clear usurpation, of power. The pardoning power of the governor is not legislative. Its exercise is properly based on the special facts of a particular case when they show that guilt is doubtful or is so mitigated that the punishment imposed is excessive. For the governor to pardon all criminals by wholesale, without regard to their guilt, would be a clear usurpation of power. It would be none the less so for him to abolish capital punishment during his term by adopting a general rule to grant a pardon or commute the sentence in every capital case. The same usurpation would be shown by interposing to prevent the execution of the law in every case where murder is committed by a woman. This would not be a proper exercise of executive clemency; it would be in effect a repeal of the statute by the arbitrary will of the governor. If the law is too severe, it is for the legislature, and not for the governor, to change it.

Irresponsibility of Collecting Bank.

An extreme and seemingly unjust application of the doctrine which exempts a bank from liability for mistakes of a reputable notary employed by it is made in the recent case of First National Bank v. German Bank

(Iowa) 78 N. W. 195. It holds that a collecting bank which puts an inland draft for protest into the hands of its assistant cashier, who is a notary public, is not liable for his negligent failure to give the notice required to hold an indorser. Here the bank charged with the duty to give the indorser notice of the dishonor of the draft, which could be given by one of its own employees, escapes all liability by directing the employee to protest the draft and give the notices in his capacity as a notary, although protest was not necessary. The statutes of the state recognize the giving of notices as part of the duty of a notary when protesting paper, and that might be a reason for exempting the bank from liability for his negligence if it had been obliged to employ a notary. But why the bank should escape liability for the negligence of its own employee in doing the very act which the bank was charged with the duty of doing, merely because it voluntarily told him to act as a notary in doing the work, is not very clear. The case does not show who took the fees for this notarial service. But, if the bank took them as its own profits, as there may be room to suspect, we should have the peculiarly interesting situation of an employer's profiting from the service of his employee and at the same time escaping all responsibility for it. If that was not the case here, it is certainly common enough for banks to have their protesting done by their own employees who do the work of notaries as part of their regular employment in the bank, and are not allowed to have any interest in the notarial fees which they earn, but which are all taken as earnings or profits of the bank business. In such cases the rule that the bank is not liable for the negligence of the notary is absurd enough to be a humor of the law.

Enforcing a Contract between Others.

The vexed question when a party may sue upon a promise made for his benefit to a third party, which, as was recently said by a judge of the court of appeals, has been for more than two hundred years under discussion by the courts of England and this country, is made the topic for an address by Hon. Joseph F. Daly, at the dinner of the society of medical jurisprudence. He says: "I am moved to propose the formation by you of another society,—say of 'surgical jurisprudence,'—not to concern itself with the profession which

operates upon diseased human members or pernicious growths of the human system, but having for its object the cutting down deep through certain growths upon our legal system and removing obstructions to the free circulation of justice." The doctrine of *Lawrence v. Fox*, which allowed a person to sue upon a contract made for his benefit with a third party, has been limited, modified, or repudiated in a great number of cases and approved in others, until as will be seen by examining the authorities in the note to *Jefferson v. Asch* (Minn.) 25 L. R. A. 257, there is a hopeless disagreement in the courts on the subject. The difficulty in which the courts have floundered is to avoid the common-law rule that a contract can be enforced only by a party to it or an assignee. But a suggestion in Judge Daly's address meets this difficulty by saying that "the designation of the beneficiary in the contract is the most formal of assignments—an assignment of which the debtor has notice, and to which he assents, giving the beneficiary a right which, under *Lawrence v. Fox*, is irrevocable. It is equivalent to an accepted order to pay." While Judge Daly thinks it is hardly to be expected that at this late day the courts will go back to the root of the difficulty and disturb so much weighty law that has grown about the subject, he says: "But if an argument were needed to support the view that it is better to have the law right than to leave it settled, it is found in the fact that after two centuries of legal pronouncement plain business men, left to their own sense of propriety, are making every day, as they made in this case, contracts which they know violate no moral or statute law and which they believe and intend to be enforceable, but which cannot be enforced because of some judicial construction of common-law rules." His conclusion is "that infinitely more private and public loss—loss to suitors in pocket and to courts in time—has been caused by the disposition to limit the doctrine of *Lawrence v. Fox* than would ever have been caused by the most liberal extension of it." He favors "a short enactment providing that where in any contract a benefit is reserved to or for a person named or described in it he shall be entitled to sue upon it without other proof of interest."

When parties explicitly agree for a benefit to a third person, the natural conclusion is that they intend to confer upon such person a valid, enforceable right. It is the business of courts to enforce contracts which are fairly

made, unless they violate statutes or public policy. But there is no rule of statute or of public policy against the enforcement of a contract by one for whose benefit it was made. The refusal of the courts to enforce such contracts is in some sense arbitrary, although it is based, of course, on their supposed inability to grant relief. The common-law rule that only parties or assignees can enforce a contract is a rule of common sense when applied to prevent strangers from intermeddling. But it is misapplied when it denies the enforcement of the right which the contract expressly created.

Payment for Shares of Stock with Property.

One of the most unsatisfactory parts in the law of corporations as it stands at present is that of the payment for shares of stock by transfers of property. The decisions on the subject are far from harmonious. Many of them, like that of *Kelly v. Fourth of July Mining Co.* (Mont.) 42 L. R. A. 621, hold that good faith in the valuation put upon property for which stock of a corporation is issued is all that is demanded by the law which allows the issuance of stock for property to the amount of its value. On the other hand, it is held, in *Van Cleve v. Berkey* (Mo.) 42 L. R. A. 598, that the property accepted in payment for stock must be in fact a fair equivalent for the money subscribed, and that the belief of the stockholder that the property was equal in value to the par value of the stock will not relieve him from liability on his subscription as against those who have given credit to the company on the faith of its capital stock, if in point of fact the property is not of such value. It is unquestionable that great frauds have been committed in many instances by the nominal payment for shares of stock by turning over property at a grossly exaggerated or mythical value. When it can be shown that the property was intentionally overvalued the courts readily agree that the payment will not be held valid as against creditors of the corporation, but the chief difficulty arises where such fraud cannot be shown, but where the property was nevertheless overvalued. The immunity of shareholders from personal liability being a statutory privilege which, as an editorial in 82 *American Law Review*, 291, clearly points out, is granted them on condition that they provide "either in money or money's worth a joint-stock cap-

ital or fund which shall stand in the place of the personal liability under which they would otherwise stand to their common creditors as joint undertakers or partners," is dependent upon their full compliance with that condition. If they pay in property instead of money, the property must be equal in value to the money for which it is substituted. The *Van Cleve* case makes the shareholder in effect an insurer of the estimated value of the property at the time it is taken. The *Kelly* case, like most cases on the subject, holds, if the estimate was made honestly and in good faith, that is sufficient, even if the valuation is in fact too high. To say that the property turned in must equal the money for which it stands in actual value does not quite settle the question. It remains to inquire how the fact that it does have the alleged value is to be determined. In the absence of fraud, a fair agreement between the corporation and shareholder as to the value at which the property should be taken is binding upon them. Should it also be binding on creditors of the corporation? Since the creation of the common fund or stock of a corporation is largely for the protection of those who may become its creditors, it may be urged that the corporation cannot, by its agreement, impair their rights. On the other hand, when a shareholder pays in property it is very important to him that he know at what value the property is to be taken, and not be at the risk of having a jury some years afterwards, and in the light of subsequent events, decide that the property was of far less value. The *Van Cleve* case makes it exceedingly dangerous for a shareholder to pay for his shares in anything but money, but, if the adoption of the doctrine of that case should result in the payment for all shares of stock in money alone, the result would not be detrimental to the public.

Not to be Reported.

The "*American Law Review*" comments rather sharply on the selection of opinions to be published in official reports, marking others "Not to be Reported." This, of course, increases the sale of unofficial reports, which include all the opinions, and causes many lawyers to buy them in addition to the official reports. But why do judges write opinions that are not to be published? A manuscript opinion, inaccessible to most lawyers, is a hidden danger. If an opinion is worth writing, it is worth publishing.

Index to Notes

IN
LAWYERS' REPORTS, ANNOTATED.

Book 42, Parts 4 and 5.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

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The part containing any note indexed will be sent with CASE AND COMMENT for one year for \$1.

Among the New Decisions.

Accession and Confusion.

The right of the owner of timber which is cut from his land by another through mistake, and made into cross ties, is held, in *Eaton v. Langley* (Ark.) 43 L. R. A. 474, to be to recover the cross ties, or, if they cannot be delivered, to have judgment for their value, less the value of the labor and material expended in transforming the timber into them, if that does not exceed the consequent increase in value. If so, his recovery is held to be the value of the property in its new form less the increase.

Actions.

The pendency of an action in a Federal court after removal from a state court is held, in *Willson v. Milliken* (Ky.) 42 L. R. A. 449, sufficient to abate a subsequent action for the same cause in a state court.

The much disputed question of the right of a third person to bring action on a contract made for his benefit is decided in *Baxter v. Camp* (Conn.) 43 L. R. A. 514, by denying the right of a son to recover on a contract made with his mother by her husband, to pay a sum of money after her death to the son.

Arrest.

An officer's declaration that he makes an arrest by authority of the state, and statements by his companions that he is an officer, are held, in *State v. Taylor* (Vt.) 42 L. R. A. 678, to be sufficient to require submission to the arrest.

Bills and Notes.

Payment of the principal of a note to the original payee in the belief that it belonged to him is held, in *Hollinshead v. Globe Investment Co.* (N. D.) 43 L. R. A. 650, to be no

protection to the maker when the note had in fact been indorsed and was in the hands of the indorsee, although coupons from the note had been collected for him after the indorsement, by the payee.

Boulevards.

A boulevard 150 feet wide, of which 60 feet is graded, while the remainder is occupied by grass plots and sidewalks, and which is under the control of park and boulevard commissioners, who constitute a city agency, is held, in *Burridge v. Detroit* (Mich.) 42 L. R. A. 684, to be a street, for the defective condition of a sidewalk on which the municipality is liable as if the boulevard was under the direct control of the common council.

An ordinance declaring a portion of an avenue to be a boulevard, on which the houses shall be used only for residences, is held, in *St. Louis v. Dorr* (Mo.) 42 L. R. A. 686, to constitute an unconstitutional invasion of the right of private ownership of property.

The conversion of a public highway into a pleasure driveway, from which loaded vehicles are excluded, is held, in *Cicero Lumber Co. v. Cicero* (Ill.) 42 L. R. A. 696, to be within the power of the municipal authorities, and not to constitute a taking of property without due process of law or for public use without compensation.

Boundaries.

Describing lands as "lying on the south side" of a non-navigable river, which is also named as a boundary, is held, in *Hanlon v. Hobson* (Colo.) 42 L. R. A. 503, to convey land to the center of the river.

Carriers.

For the death by exposure of an intoxicated passenger who was carried past his station and put off against his wishes at the next station, and then driven out of the depot late at night, when the weather was stormy and dangerously cold, it is held, in *Haug v. Great Northern R. Co.* (N. D.) 42 L. R. A. 664, that the railroad company is liable in damages.

Commerce.

A statute forbidding the sale of goods made by convicts unless they are marked "Convict Made" is held, in *People v. Hawkins* (N. Y.)

42 L. R. A. 490, to be unconstitutional as a regulation of commerce with respect to goods made in other states, and not a valid exercise of the police power as to them.

Constitutional Law.

A curfew ordinance passed without express legislative authority, prohibiting all persons under the age of twenty-one years from being on the streets or alleys of a city after 9 o'clock at night, unless accompanied by parent or guardian, or in search of a physician, is held, in *Ex parte McCarver* (Tex.) 42 L. R. A. 587, to be void for unreasonableness and as an invasion of the personal liberty of citizens.

Corporations.

The statutory lien of a corporation upon its stock for the debt of a stockholder is held, in *Aldine Mfg. Co. v. Phillips* (Mich.) 42 L. R. A. 581, to be one which cannot be foreclosed in equity unless the remedy by judgment and execution is inadequate.

The presence of all the directors of a corporation at a special meeting is held, in *Troy Mining Co. v. White* (S. D.) 42 L. R. A. 549, to make the failure to give proper notice of the meeting immaterial, although the statute requiring notice is mandatory.

The most advanced doctrine declared on the subject of the payment for stock in a corporation by a transfer of property is that of *Van Cleve v. Berkey* (Mo.) 42 L. R. A. 593, holding that the subscriber must pay in property which is actually equivalent to the par value of the stock, and that his good faith and his belief that the property is of that value will not relieve him from liability if it is not in point of fact of such value.

Stockholders of a corporation who attempt to evade the stringency of the laws of their state as to their liability, by forming a new company in another state and exchanging their stock, share for share, are held, in *Sprague v. National Bank of America* (Ill.) 42 L. R. A. 606, to hold the new stock as paid only to the extent that the actual value of the property of the old company exceeded the sum of its indebtedness.

Good faith in the valuation put upon property for which stock of a corporation is issued is all that is demanded in *Kelly v. Fourth of July Mining Co.* (Mont.) 42 L. R. A. 623, under a law which provides that stock may be issued for property to the amount of its

value thereof. And this good faith is held to be such belief as a prudent and sensible business man would hold in the ordinary conduct of his business.

Corpse.

The opening of a grave in a town cemetery by order of town officers, for the purpose of removing a body from a lot which has not been paid for to another part of the cemetery, which is free, is held, in *State v. McLean* (N. C.) 42 L. R. A. 721, to be within a statute making it a felony for any person to open a grave and remove a dead body therefrom without due process of law or the consent of specified relatives.

Criminal Law.

A boy under fourteen years of age is held, in *Foster v. Com.* (Va.) 42 L. R. A. 589, to be conclusively presumed to be incapable of committing the crime of rape or of an attempt to commit that crime.

Damages.

The damages which a florist may recover for injury to plants by escaping gas are held, in *Dow v. Winnepesaukee Gas & E. Co.* (N. H.) 42 L. R. A. 569, not to include any injury to his business reputation on account of sales of damaged plants, as that is conjectural and too remote to be allowable.

Easements.

The right to a way by necessity for land completely surrounded by that of other owners is held, in *Ellis v. Blue Mountain Forest Association* (N. H.) 42 L. R. A. 570, to be founded on an implied grant and to depend on a previous unity of ownership, so that the right does not arise in case all the land surrounding a tract is bought by another owner, who procures the discontinuance of the highways leading to the tract inclosed.

A pipe line for oil laid underground in a wagon road or crossing under a railroad track, which, by stipulation in a deed to the railroad company, it is required to construct and maintain for the grantor, is held, in *United States Pipe Line Co. v. Delaware, L. & W. R. Co.* (N. J.) 42 L. R. A. 572, to constitute a trespass even if it does not injure the railroad, as it is not within the easement reserved.

Election Districts.

An act changing election districts after they have once been established by a statute based upon the last census, and before a new census has been taken, is held, in *Harrison v. Ballot Comrs.* (W. Va.) 42 L. R. A. 591, to be in violation of W. Va. Const. art. 6, § 10, which permits but one apportionment after a census until the next census is taken.

Fire Department Associations.

A statute making a fire department association the recipient of privilege or occupation taxes collected from insurance companies, and imposing on it the duty of disbursing or administering the fund, is held, in *Phoenix Assurance Co. v. Fire Department* (Ala.) 42 L. R. A. 468, to be not unconstitutional on that ground, where the money is applied to a public use.

Hacks.

An ordinance absolutely prohibiting drummers, runners, hackmen, cabmen, and all other persons from entering a union passenger depot, even with the owner's consent, to solicit custom or patrons, is held, in *Cosgrove v. Augusta* (Ga.) 42 L. R. A. 711, to be in excess of the power of the city council under the general welfare clause of the city charter.

Incompetent Persons.

The liability of a lunatic on his contract is sustained in *Flach v. Gottschalk Co.* (Md.) 42 L. R. A. 745, if the contract is fair and reasonable in its terms and was made with one who did not know of the lunacy, when that had not been judicially ascertained, and where the parties cannot be restored to their original situation.

Injunction.

Delay for ten years to contest the right of a rival to the use of a trademark, though knowing that he is expending large sums of money in extending the use of and demand for the article on which the trademark is used, is held, in *Old Times Distillery Co. v. Casey* (Ky.) 42 L. R. A. 466, to be fatal to an application for an injunction against the use of it.

Insolvency.

A foreign corporation which does not prove its claim or accept a dividend in insolvency proceedings by its debtor in a state where it has an established place of business, and where it is duly served, is held, in *Hammond Beef & P. Co. v. Best (Me.)* 43 L. R. A. 528, to be unaffected by the debtor's discharge, as the corporation is a person residing in another state.

Labor Organizations.

A provision that none but union labor shall be employed is held, in *Adams v. Brennan (Ill.)* 42 L. R. A. 718, to be beyond the power of a public corporation, such as a board of education, to make in a contract, as it constitutes a discrimination between different classes of citizens, and is of such a nature as to restrict competition and increase the cost of the work.

Limitation of Actions.

A general statutory provision that the placing of notice in the hands of the sheriff for service shall constitute the beginning of an action is held, in *Smith v. Callanan (Iowa)* 42 L. R. A. 482, to apply in case of special statutes of limitation, such as that regulating the time for redemption from tax sales, unless there is something in the statute itself to the contrary, or such course will violate some recognized rule of construction.

An attempt to commence an action in a court of record by delivering a summons to the sheriff with intent that it be served, which is made equivalent to the commencement of an action in New York, is held, in *Hamilton v. Royal Ins. Co. (N. Y.)* 43 L. R. A. 485, to be sufficient commencement of an action on a fire insurance policy under a statute requiring the action to be brought within twelve months after the fire.

Militia.

The national guard or active militia of the state are held, in *State, ex rel. Madigan, v. Wagener (Minn.)* 42 L. R. A. 749, to be neither "troops," within the meaning of the Federal Constitution, nor a "standing army," within the meaning of the state Constitution, and a violation of the rules and regulations of the Military Code is held not to constitute a criminal offense, within the meaning of the bill of rights, but the members may be court-martialed in time of peace.

Public Improvements.

An attempt to impose upon abutting owners the cost of street improvements is held, in *Asberry v. Roanoke (Va.)* 42 L. R. A. 636, to be in violation of the constitutional provision for equality and uniformity of taxation, and an abandonment of the theory of special benefits, on which alone the abutting property can be lawfully assessed. This decision is in harmony with that of *Norwood v. Baker*, 172 U. S. 269, which holds that assessments in substantial excess of the benefits in such cases are unconstitutional.

To similar effect is *Detroit v. Chapin (Mich.)* 43 L. R. A. 638, holding that the cost of a public improvement cannot be assessed on a local assessment district unless the assessment is in proportion to the benefits received.

So, in *Weed v. Boston (Mass.)* 43 L. R. A. 642, it is held that assessments according to frontage of lots on a strip of land taken for a sewer may be so grossly disproportionate to benefits as to be unconstitutional.

On the other hand, frontage tax assessments are sustained in *Ramsey County v. Robert P. Lewis Co. (Minn.)* 43 L. R. A. 639, to pay for water mains in streets, but the effect of the Federal Constitution does not seem to have been considered in the case.

And in *Rolph v. Fargo (N. D.)* 43 L. R. A. 646, the validity of frontage assessments without regard to benefits is sustained in a very elaborate opinion which presents the case in favor of them with unusual strength, but which is in conflict with the now established doctrine of the United States Supreme Court as shown in the case of *Norwood v. Baker*.

Receivers.

Attachments by creditors in other states after a receiver's appointment, although not affected by a statute of the state of his appointment, dissolving attachments, are held, in *Ward v. Connecticut Pipe Mfg. Co. (Conn.)* 43 L. R. A. 706, to give the creditor who attaches after notice of the receivership no rights which can be sustained in the court which appointed the receiver, and any advantage gained thereunder must be surrendered before he can share in the receivership. But attachments made in other states before notice are upheld.

An action for injury or death caused by negligence of a receiver of a corporation is held, in *Bartlett v. Cicero Light, H. & P. Co.*

(Ill.) 42 L. R. A. 715, to be maintainable against the corporation after restoration of the property to it on the receiver's discharge.

Schools.

The reading of extracts from the Bible, emphasizing the moral precepts of the Ten Commandments, as a supplemental textbook used at the close of the sessions, when any pupil may be excused upon application of parents or guardians, is held, in *Pfeiffer v. Board of Education* (Mich.) 42 L. R. A. 586, to be no infringement of the constitutional guaranties against compelling persons to support or attend places of worship or to pay taxes for the support of teachers of religion, and not to be in violation of the provision against appropriations of public money or property to religious sects, societies, or seminaries.

Statutes.

A code of laws is held, in *Central of Georgia R. Co. v. State* (Ga.) 42 L. R. A. 518, not to be necessarily a part of a statute adopting it, so as to require all its provisions to be read three times as part of the bill, and the bill is held to refer only to a single subject-matter.

Witnesses.

Belief in God and the sense of accountability to him for false swearing are held, in *State v. Washington* (La.) 42 L. R. A. 553, to be indispensable to the competency of a witness.

New Books.

"Annotated Corporation Laws of All the States." By Cumming, Gilbert, & Woodward. (L. C. P. Co., Rochester, N. Y.) 8 Vols. \$18. This contains the full text of all the corporation statutes of all the states, which are annotated, section by section, with all the decisions of the courts relating to them. The work is surprisingly extensive. There has been nothing like it before.

"The Law of Usury." By James Avery Webb. (The F. H. Thomas Law Book Co., St. Louis,) 1899. 1 Vol. \$6.

"Supplement to Hart's Digest Patent Decisions." Annual for 1898. (Callaghan & Co., Chicago.) 1 Vol. \$2.50.

"Digest of Mississippi Reports." Vols. 45-73. (Marshall & Bruce Co., Nashville, Tenn.) 2 Vols. \$15.

"Law of Legislative Power in Canada." By A. H. F. Lefroy. (Toronto Law Book & Pub. Co., Toronto.) 1 Vol. \$9.

"Experience in the United States Supreme Court." By Ex-Attorney General Garland. (John Byrne & Co., Washington, D. C.) 1 Vol. \$1.

Recent Articles in Law Journals and Reviews.

"Liability of Public Corporations for Polluting Streams."—48 *Central Law Journal*, 92.

"Larceny by Trick."—63 *Justice of the Peace*, 17.

"An Inquiry into the Nature and Law of Corporations." Part I.—38 *American Law Register*, N. S. 1.

"Gifts and Sales of Intoxicating Liquor Contrasted."—38 *American Law Register*, N. S. 17.

"Set-Off and Counterclaim."—35 *Canada Law Journal*, 10.

"Presumptive Negligence of Carriers." Part I.—59 *Albany Law Journal*, 145.

"The Law of Riot."—59 *Albany Law Journal*, 148.

"Interference of Third Parties in Contracts of Others."—48 *Central Law Journal*, 112.

"Consent in Its Relation to Criminal Liability."—48 *Central Law Journal*, 71.

"Our Rights to Acquire and Hold Foreign Territory."—7 *American Lawyer*, 47.

"The Law of the Book of Mormon."—24 *Law Magazine and Review*, 138.

"Mediæval Piracy and the Lords High Admiral of England."—24 *Law Magazine and Review*, 144.

"The Law as to Sunday Amusements."—24 *Law Magazine and Review*, 155.

"The Lunacy Laws."—24 *Law Magazine and Review*, 166.

"State Interference in, (a) Contraband Trade, (b) Blockade Running."—24 *Law Magazine and Review*, 203.

"Is the Law of Fixtures Irreconcilable?"—48 *Central Law Journal*, 132.

"The Incidents of Burial."—63 *Justice of the Peace*, 65.

"Lawyers in the English Parliament."—11 *The Green Bag*, 131.

"Good and Bad Law Reporting."—11 *The Green Bag*, 105.

"Trials in Athens."—11 *The Green Bag*, 103.

"Liability of Stockholders in Foreign Jurisdictions."—48 *Central Law Journal*, 102.

"Bicycle Law."—85 *Canada Law Journal*, 130.

"The Art of Law Reporting."—8 *Madras Law Journal*, 455.

"What is a Valid Limitation to Cease upon Marriage, or a Condition Void as Being in Restraint of Marriage."—48 *Central Law Journal*, 172.

"Adams's Science of Finance."—14 *Political Science Quarterly*, 128.

"Taxation of Securities."—14 *Political Science Quarterly*, 102.

"The Defects of the Old Radicalism."—14 *Political Science Quarterly*, 69.

"England and Her Colonies." I.—14 *Political Science Quarterly*, 89.

"Dependencies and Protectorates."—14 *Political Science Quarterly*, 19.

"Government of Distant Territory."—14 *Political Science Quarterly*, 1.

"The Liability of an Infant who Represents Himself of Age."—8 *Yale Law Journal*, 235.

"Some Aspects of the Indeterminate Sentence."—8 *Yale Law Journal*, 219.

The Humorous Side.

NOT BRIEF BUT A BRIEF.—A dissenting judge recently began his opinion by saying he "would give brief expression" to his reasons, and then kept on being brief until his opinion exceeded 10,000 words.

ONLY A CALAMITY.—The unlawful combination of elevated railroad companies is held in Illinois to be neither an "accident" nor a "casualty."

LEARNED IN GREEK.—Unmindful of Josh Billings' warning against knowing so many things that are not so, an article on Mendelssohn in an educational journal tells us that the name "Bartholdy," adopted by Mendelssohn's family, means "son of Tholdy" in Greek. The erudite discovery that the prefix "Bar," meaning "son," belongs to the Greek language, must create a sensation among Greek scholars.

HIS IDEA OF VALUES.—A Colorado client asking his attorney to bring a suit for dam-

ages against a farm hand who had been recently working his farm specified the following items:

To ruining one team of horses	- - - \$25.00
To breaking harrow	- - - 10.00
To teaching his boy (age eight years) to chew tobacco	- - - 10.00
To causing his wife to have nervous prostration on account of a dun for a bill which she owed	- - - 10.00

A STICK IN IT.—In a description of the marvelous products of a Tennessee boom town, a lady eulogist, quoted by the court in a recent case, said: "As to strawberries, I heard the Honorable Benton McMillin remark at a dinner that 'two wouldn't leave room in a tumbler for a stick!'" On this the court said: "By way of annotation, we might add that the full significance of the remark of the Honorable Benton McMillin might not be appreciated by the uninitiated, who might wonder what connection there could be between strawberries in a tumbler and a stick. The inference that we draw from this remark, evidently made with pardonable pride by Mr. McMillin, is that mint is also indigenous to that locality; and, indeed, we could conceive that, with the proper proportions, one strawberry and a stick would have been sufficient."

HAD DECIDED IT ONCE HIMSELF.—A Georgia justice of the peace once took upon himself to charge a jury as follows: "Gentlemen, this is a case which has been tried by me before, and I decided in favor of the defendant." As the jury took the hint and found for the defendant just as the justice had done before, although the evidence was overwhelmingly in favor of the plaintiff, the higher court refused to let the verdict stand. It also commented as follows:

"A justice of the peace is generally a man of consequence in his neighborhood; he writes the wills, draws the deeds, and pulls the teeth of the people; also he performs divers surgical operations on the animals of his neighbors. The justice has played his part on the busy stage of life from the time of Mr. Justice Shallow down to the time of Mr. Justice Riggins. Who has not seen the gaping, listening crowd assembled around his honor, the justice, on tiptoe to catch the words of wisdom as they fell from his venerated lips?

"And still they gazed,
And still the wonder grew,
That one small head
Could carry all he knew."

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William W. Morrow.

Judge William W. Morrow, of the ninth judicial circuit, is a native of Indiana. He was born in Wayne county in that state near Milton, on July 15, 1843. The family moved to Illinois in 1845. In 1859 he went to California, which has since been his home.

Judge Morrow was admitted to the bar in California in 1869, and in 1870 he was appointed assistant United States attorney for that state, and served as such for four years. He was attorney for the state board of harbor commissioners from 1880 to 1883. He became special counsel for the United States before the French and American claims commission, and acted in that capacity from 1881 to 1883, and also was special counsel for the United States before the Alabama claims commission from 1882 to 1885. He was chairman of the Republican state central committee of California from 1879 to 1882, and was a delegate to the national Republican convention in 1884, being chairman of the California delegation therein. He was elected to the forty-ninth Congress for the San Francisco district in 1884, and was re-elected in 1886 and in 1888, but in 1890 declined a renomination. In Congress he served on the committee on commerce, immigration, foreign affairs, and appropriations. President Harrison, on September 18, 1891, appointed him United States

district judge for the northern district of California, and on May 20, 1897, President McKinley appointed him United States circuit judge for the ninth judicial circuit.

In the ninth judicial circuit, with a territorial extent sufficient for an empire, the Federal court has to decide questions of great variety, covering the whole range of legal subjects from admiralty to mining, and often affecting financial interests of vast magnitude. On many of these subjects Judge Morrow has already been called to write the opinion of the court, and his opinions on all these subjects fully demonstrate his ability to deal with all the judicial problems that come before the court.

Coercion by Trade Association.

One method of ruining trade competitors has just proved unsafe in Vermont. A Green Mountain justice was sufficient for the evil. A rule of an association, enforceable by fine, prohibited any dealing by its members with persons who were not members. By its enforcement the business of a rival was deliberately ruined. In an action against the members for conspiracy they claimed that they had merely withheld their own patronage from the injured party, and that this they had a right to do. But the court, in *Boutwell v. Maer* (Vt.) 59 Atl. 233, held that the by-law, which imposed a penalty upon them for dealing with him, amounted to a system of coercion, of which they were both the authors and the victims. The fact that they voluntarily assumed the obligations of the association was held insufficient to relieve the by-law of its coercive effect. This is a new phase of the subject of trade boycotts. The effect of penalties imposed on the members of an association to make a by-law constitute an illegal

coercion of themselves does not seem to have been before considered. In *McCauley v. Tierney*, 19 R. I. 255, 37 L. R. A. 455, the threat by an association that its members will withdraw their patronage from a dealer if he deals with those who do not belong to their organization is held lawful, on the ground that they had a right to withdraw their patronage and might make such condition of its continuance as they chose. But that case did not involve—or at least did not discuss—the effect of a coercive by-law.

Continuing Negligence.

A new phase of the law of negligence seems to have developed recently in the doctrine of what is called "continuing negligence." It is illustrated in *Greenlee v. Southern R. Co.* (N. C.) 41 L. R. A. 399, and *Troxler v. Southern R. Co.* (N. C.) 82 S. E. 550, in which it was held that contributory negligence of a brakeman in coupling cars will not preclude a recovery for injuries caused by the absence of self-couplers because that constituted continuing negligence of the master and existed subsequently to the negligence of the brakeman. The same doctrine seems to have been acted upon, without expressly adopting it, in *Thompson v. Salt Lake Rapid Transit Co.* (Utah) 40 L. R. A. 172, in which it was held that defects in a street-car brake which made it impossible to stop the car quickly rendered the company liable for killing a deaf and dumb boy who was struck by the car, even if he was guilty of contributory negligence. This doctrine seems to abrogate the well-known rule of contributory negligence which charges the responsibility for an accident upon the party who had the last clear chance to avoid it. Or, at least, it makes a class of exceptions so large as to leave that rule but little effect. If the doctrine of continuing negligence is sound, it would seem to have just application in all cases in which negligence is based on defects in any machine, apparatus, tool, implement, place of work, or any other material thing. Such defect, of course, continues at the time of the injury. If contributory negligence is to be deemed immaterial in such cases, it will shrink to be a very small factor in the law of negligence.

Cigarettes Outlawed.

A Tennessee statute making any sale of cigarettes unlawful has been lately held con-

stitutional, even as to imported cigarettes, on the ground that they are not legitimate articles of commerce, but are noxious, deleterious to health, altogether and always pernicious. This was in the case of *Austin v. State* (Tenn.) 48 S. W. 303. The court conceded that if cigarettes are commercial articles the state could not prevent their importation and sale in original packages; but it planted its decision squarely upon the proposition that such pernicious articles are excluded altogether from the class of commodities that may be subjects of commerce. As it was held in *Leisy v. Hardin*, 135 U. S. 100, that intoxicating liquors are commercial articles which a state could not exclude, the Tennessee court distinguishes that case on the ground that intoxicating liquors were there recognized as commercial articles, and quotes the words of Mr. Chief Justice Fuller, to the effect that intoxicating liquors had been recognized as commercial articles "by the usages of the commercial world, the laws of Congress, and the decisions of courts." In what way Congress had recognized intoxicating liquors as commercial articles Mr. Chief Justice Fuller did not say. In fact this congressional recognition was by the imposition of import duties and internal revenue taxes upon them and by regulation of the traffic for these purposes. It does not appear why substantially the same recognition has not been given by Congress to cigarettes, as it has imposed internal revenue taxes upon them, regulated the mode of packing them, and made express provisions with respect to imported cigarettes. In trade and commerce the public has long recognized the commercial character of cigarettes as well as other forms of tobacco and of intoxicating liquors. An immense traffic in cigarettes has been carried on lawfully for about a quarter of a century. This ought to be sufficient to establish the fact that cigarettes are commercial articles. Whatever kind of articles men traffic in freely, extensively, and for a long term of years may well claim an established position among commercial articles within the reach of the constitutional protection. Articles which are commercial in fact must be deemed commercial in law. The Tennessee court has presented the other side of this question very strongly, and any decision of that court deserves very great respect, as it is one of the very strong courts of this country. But in this matter we think the doctrine which must prevail will recognize that any commodities in

which there is an extensive traffic in the markets of the country must be recognized by the courts to be articles of commerce in law as well as in fact.

Corporation Laws.

The amazing commercial and industrial developments of the latter half of this century are best represented in the law by the growth of the law of corporations. The subject touches life at so many points that it is on its popular as well as on its legal side the most important subject in the law, except that which involves the fundamental constitutional questions. Its peculiar importance to practising lawyers is due to the great number of corporations that are doing business of all kinds, the multitude of actions brought by or against them, and the vast sums of money invested in them. A recognition of this fact is shown by the fact that on no other branch of the law is there so long a list of excellent treatises, including such admirable works as Cook on Stockholders and the Commentaries of Judge Thompson. Although the subject is essentially statutory, up to the present time the working books of the profession have been written chiefly from the standpoint of the judicial decisions. But we now have, fortunately, a work based on the statutes themselves, giving the complete text of the corporation laws of each state, and showing all that the courts have decided with respect to each section. This work (which was mentioned last month in our list of new books) has been done by Messrs. Cumming, Gilbert, and Woodward, whose valuable work of this kind upon New York laws is well known in that state. For many of the states there is no other recent compilation of such statutes, or any annotation of them. In only a few of the greatest law libraries can there be found all the corporation laws that are contained in the three volumes of this work; and even the greatest library will not furnish any other means of so quickly comparing the statutes of different states or of tracing out the decisions based upon them. For these reasons these annotated statutes are of extraordinary value to legislators and others who are working to improve the corporation laws of their own state. Their value to a lawyer who has any questions to answer concerning corporations of other states needs no comment.

The rapid formation and incorporation of great trusts has concentrated attention just

now upon the laws which govern them. The interstate character of many corporations, and the rights and liabilities of stockholders of foreign companies, are constantly presenting new questions. No other branch of general or statutory law seems likely to be of equal importance during the next decade. There are many indications that the justice and public policy of some of our corporation laws are to be sharply challenged in the immediate future. Corporations are becoming so numerous and potent, the conflicting interests of shareholders and creditors are so great, and the general relation of corporations to the public welfare is so vital, that the discussion of the subject is already extending into the daily newspapers. There are some indications that the policy of such laws may become a political question; but from the evil of a partisan discussion of the subject, with all its passion and misrepresentation, let us hope to be delivered.

In the recent case of Commonwealth Mutual F. Ins. Co. v. Edwards (N. C.) 82 S.E. 404, Douglas, J., speaks the following wise and temperate words:

"The prevailing tendency to corporate absorption cannot be ignored, and it is the increasing duty of the state, while giving to all corporations the equal protection of its laws, to equally protect its citizens against corporate abuses. There should be no prejudice against corporations simply because they are corporations. They are not outlaws, but are the creatures of the law, and are not only capable of becoming the most powerful agencies of civilization, but have become absolutely necessary in our present stage of material development. They can be justly condemned only when their powers are abused, but, in proportion as their powers are greater than those of an individual, they are more liable to abuse, and should be more carefully guarded."

Injunction against Bogus Attorneys.

The power of a court of equity to enjoin an unlicensed person from holding himself out to the public or practising in the courts of the state as an attorney at law is asserted and exercised by Judge Tuley of Chicago in *People, ex rel. State's Attorney, v. Thompson* (C. Ct. Cook Co.) 81 Chicago Legal News, 261. The lack of any property right of the state in the matter is held, on the authority of *Re Debbs*, 158 U. S. 564, 39 L. ed. 1092, not to prevent the exercise of equity jurisdiction. Judge

Tuley says: "It may well be held to be the duty of the state, charged with the welfare of its whole people, to protect the general public against such enemies of society. If it cannot do so by injunction, it cannot do so at all. There is no other remedy. The statute requiring a license in order to practice as an attorney affixes no penalty for its violation, and, if it did, the remedy by penal prosecution would be almost, if not quite, useless."

The Chicago Legal News says that this decision will strike terror to the hearts of "more than 200 persons who are practising law in Chicago without any license or authority whatever."

It is refreshing to know that these illegitimate practitioners are to be expelled from the courts and deprived of the power to cheat the public. But it may be doubtful if an injunction against their unlawful practice is within the legitimate power of a court of equity. It seems certain, at least, that an injunction is not the only remedy. Imposing upon the court by representing oneself to be an attorney when he is not is certainly contempt of court and punishable as such. The inherent power of the court to punish contempt seems to furnish in itself a fairly adequate remedy for such unlawful practice.

Another remedy in those states which make it a misdemeanor to practice law without authority is that of penal prosecution. Why this is not as adequate a remedy as an injunction is not apparent. The injunction merely adds the mandate of the court to that of the legislature, and, if disobeyed, the equity court punishes for disobedience of its decree, while the criminal court punishes for disobedience of the statute. The penal prosecution, if successful, ends in punishment by fine or imprisonment for violation of the statute. The injunction, if disobeyed, is enforced by fine or imprisonment for contempt of court. The theory that the remedy at law in such a case is inadequate seems to have no basis except the fact or belief that a chancellor is more reliable than a jury. But the uncertainty of jury trial certainly cannot be sufficient ground for chancery jurisdiction, as, if it were so, the jurisdiction of chancery would be extended to cases of every nature which are now tried in courts of law.

Judge Tuley's injunction is a most righteous one, if it is within the exercise of his jurisdiction. The doubt as to his jurisdiction is raised by the query whether or not the reme-

dies by punishment for contempt and by penal prosecution are not adequate.

Duty of Passenger to Submit to Extortion.

The theory that submission to an extortionate demand backed by a threat of greater injury is the duty of a victim, in order to prevent the wrongdoer from executing his threat to inflict the larger damage, is a very strange one. Yet some important courts have adopted it in cases where passengers have been ejected from a train for refusal to pay fare wrongfully demanded. These courts hold that the passenger's damages are limited to the fare demanded because, by paying that, he could have prevented any greater damage. These decisions are in conflict with those of other courts, and they seem to be entirely anomalous and indefensible.

There is much apparent confusion in the conflicting decisions on this subject which is caused by failure to distinguish between the cases in which the passenger has a right to ride on the train from which he is ejected and those in which he had paid for a ride but had no right to ride on that particular train because he had failed to provide himself with a proper ticket or other evidence of his right. It does not seem unjust to hold that a passenger ought to be required to pay fare even when it is not justly due to the carrier in order to avoid unnecessary damages, if he has got upon a train knowing, or having fair opportunity to know, that he has not the proper evidence of his right to ride. In such a case his own fault or negligence may properly be held to preclude him from insisting that his own word be accepted by the conductor in respect to his right to ride. It may fairly be urged that he is not in fact entitled to ride upon that train without further payment, and therefore the demand upon him for fare is rightfully made in the exercise of the conductor's duty. In such a case it is his duty to pay the demand, not merely to keep down damages, but because, as between him and the conductor of that train, he has no right to ride without paying. But when the passenger has not been negligent, when, having paid for his ride, he has got upon a train with a ticket which he reasonably supposes and has a right to suppose to be good for his transportation, the question involved is simply the question of duty to submit to an improper and unjust de-

mand in order to keep down damages. The doctrine of a duty to minimize damages does not seem to have been carried so far in any other class of cases as to require submission to an unlawful demand in order to procure protection from threatened assault or other tort. Such an application of the doctrine also seems to conflict with well-settled principles of law. It is proper enough to require due care on the part of a person to avoid increasing his own damages, but the reason for the rule ceases when the damage to be avoided is a voluntary injury threatened by the party who claims the benefit of the doctrine. For a carrier to say to a passenger, "You must submit to extortion in order to prevent me from assaulting you, else you will be deemed in law to have caused your own damage needlessly," is equivalent to an attempt of the carrier to profit by its own wrongful threats. It amounts to a claim of exemption from liability for assault because the wrongdoer first offered his victim a choice between assault and extortion.

Compelling Municipalities to Do Justice.

The theory that municipalities are not bound by rules of justice seems to crop out frequently in the contentions of counsel and sometimes also in the opinions of the courts. The supremacy of the public welfare over the interests of the individual is, of course, the foundation of some important rules of law. Yet this principle would quickly lead to tyranny unless checked on every side by the demands of justice. The interest of the public may compel the surrender by a citizen of his home through the exercise of eminent domain, but the interest of the individual is guarded to the fullest extent possible consistent with the interests of the public. He must yield his property; but he must have "just compensation." Constitutional guarantees of equal protection, equal privileges and immunities, just compensation, and due process of law, are sufficient, if properly interpreted, to give substantial protection to individuals in nearly all cases. The courts, indeed, must recognize that ideal justice is not always obtainable; but they ought always to insist that any rule which they sanction must be a just rule, even if, through the imperfection of human judgment, it may be misapplied.

The most glaring instances of municipal injustice which have ever been sanctioned by the courts have been in the matter of special assessments for public improvements when

these were not based on equivalent special benefits. The death knell of that injustice seems to have been sounded by the decision in *Norwood v. Baker*, 172 U. S. 269. A very healthy rule of justice has also been laid down in the recent case of *McConville v. St. Paul* (Minn.) 77 N. W. 993, in which money paid under compulsion by an abutting owner for a street assessment was held to be recoverable by him in an action against the city, when the city had failed to make and had definitely abandoned that part of the improvement which would be beneficial to him. In such case the entire consideration of the assessment fails, and the retention of the money by the city would be plain injustice. Such decisions get down to foundation principles, which courts sometimes fail to reach. It may sometimes impose a considerable burden upon a municipality to do justice in matters of this kind. But that burden will be slight compared with the evil which any government by the people must sustain by a deliberate abandonment of justice.

Advertising His Shame.

The most remarkable modern instance of advertising one's own stultification appeared in a recent issue of a Chicago daily. In discussing the policy of a law to require signed editorials, the writer says:

"So far as editorials are concerned, it is as futile as it is unfair to hold the writers responsible for the opinions expressed in them. The policy of a paper is determined by the owner, and he virtually dictates every utterance published editorially. As well call upon a typewriter to assume liability for the words and sentiments dictated by the real author! The writer of an editorial, any more than the compositor who puts it in type, does not necessarily believe in the ideas he is made to express; indeed, very frequently he holds views diametrically opposite to those of his chief, whose orders he obeys and whose opinions he is bound to advocate loyally and consistently. The hand is that of the writer; the voice that of the proprietor."

Since this editor deliberately professes himself to be a mere puppet of the proprietor, we have no reason to suppose that he really holds any such views as he expresses, or that he did not write this particular editorial under compulsion because ordered to do so by the owner of the paper. Editors in this state of intellectual and moral degradation ought to form a

secret society to be known as "The White Slaves."

A greedy and unprincipled man owning a great newspaper, if he also owns the brains and consciences of his editors, is likely to be a breeder of pestilence. The position of a newspaper proprietor is not different, except in degree of responsibility, from that of any other business man. He ought, of course, to conduct his business as a financial success; but he ought to do it with full appreciation of his responsibility as a citizen for the preservation and advancement of the public welfare. His obligation is greater than that of other men only as his opportunity and power are greater.

A high tone of intellectual and moral leadership and of statesmanlike responsibility is maintained by some of the proprietors of the press. But another portion regards anything as legitimate that can be turned into money. Some whiningly apologize for the degradation of their columns by saying, in chorus with every other panderer to vice, that they must give what the public demands. An editor whose brain is marketable in aid of any cause, great or small, that may promise profit to such a venal proprietor, is more pitifully degraded than a runner-in for saloons or a hired decoy for gamblers. If the editorial position in modern journalism is correctly defined by this Chicago newspaper, it will not be long before the public understand it, and such an editor will be looked upon as an intellectual parasite and a moral eunuch.

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IN

LAWYERS' REPORTS, ANNOTATED.

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Among the New Decisions.

Bills and Notes.

The sufficiency of presentment and demand of payment made on a receiver *pendente lite* of an insolvent bank, and of notice of non-payment by him, to bind an indorser of a negotiable certificate of deposit issued by the bank before its insolvency, is denied in *Jackson v. McInnis* (Or.) 48 L. R. A. 128.

Carriers.

The distinction between common carriers and ordinary employers in respect to liability for malicious assaults made by employees is sharply presented in the case of *Haver v. Central R. Co.* (N. J.) 43 L. R. A. 84, holding that for an assault upon a passenger the carrier is liable.

One who gets upon a train with a ticket which he knows does not, upon its face, entitle him to passage, because the time for which it purports to be valid has expired, is held, in *Trezona v. Chicago Great Western R. Co.* (Iowa) 43 L. R. A. 186, to have no right to recover damages for being ejected, if he refuses to pay fare, although he thinks the time limitation is unreasonable.

But the limitation of a general ticket for passage on a railroad to the day on which it is sold is held, in *Louisville & N. R. Co. v. Turner* (Tenn.) 43 L. R. A. 140, to be invalid, unless there is an express contract to that effect, based upon a consideration, or an alternative given to the purchaser to have a full and unlimited ticket.

Conflict of Laws.

The enforceability of a stockholder's liability in a jurisdiction outside of that in which the corporation was created is sustained in *Bell v. Farwell* (Ill.) 43 L. R. A. 804, in case of a Kansas corporation, on the ground that the stockholder's liability under Kansas law is not penal, but contractual.

Constitutional Law.

The constitutional provision against *ex post facto* laws is held, in *Murphy v. Com.* (Mass.) 43 L. R. A. 154, to condemn a statute which alters or may alter in a substantial manner the position of those who committed offenses before its passage, even if in a particular case it might operate more beneficially than the prior law would have done. And this rule is applied where a statute changed the provision as to deductions for good conduct and permits to be at liberty.

Contracts.

A contract to sell the bid or interest of a successful bidder at a judicial sale before it is confirmed, for more than the amount bid, is held, in *Camp v. Bruce* (Va.) 43 L. R. A. 146,

to be contrary to public policy, unless the advance on the bid inures to the benefit of the parties to the suit.

Corporations.

The right to use the name of a corporation is held, in *Armington v. Palmer* (R. I.) 43 L. R. A. 95, to be distinct from the right to use the name of articles manufactured by it, and not to pass with the latter on a purchase of the plant, machinery, stock, and visible property of the company.

Criminal Law.

In determining whether or not a person is an habitual criminal under a statute making him such after two former imprisonments for felony, it is held, in *State v. Martin* (Ohio) 43 L. R. A. 94, that imprisonment terminated by unconditional pardon cannot be counted.

Curative Acts.

An expository statute which declares that premiums, fines, or stock taken to represent premiums for loans made by any building and loan association shall not be treated as interest, but shall be collected as debts, is held, in *Lindsay v. United States Savings & L. Co.* (Ala.) 43 L. R. A. 783, to be invalid as applied to past transactions which were usurious under the construction given by the courts to previous laws.

Evidence.

The evidence of expert witnesses as to the value of services is held, in *Hull v. St. Louis* (Mo.) 43 L. R. A. 753, to be merely advisory, to be given by the jury such weight as they deem it entitled to, or to be altogether disregarded by them, if, from all the facts and circumstances in evidence, they believe the testimony of the experts to be unreasonable.

Gift.

A promissory note given by the maker to the payee, who is a relative, to enable the latter to cease work, though it may be without consideration and subject to repudiation at first, is held, in *Ricketts v. Scothorn* (Neb.) 43 L. R. A. 794, to be valid and enforceable, when the payee, in reliance upon it, has surrendered a lucrative position.

The general rule that a note which amoun

to a mere gift is invalid for want of consideration, but is enforceable after money has been expended or liabilities incurred in reliance upon it, is applied in *Miller v. Western College of Toledo* (Ill.) 43 L. R. A. 797, in case of a promissory note given to a college.

Hacks.

The disputed question of the right of a railroad company to give one hackman an exclusive privilege of soliciting passengers within its station grounds is answered in *State v. Reed* (Miss.) 43 L. R. A. 134, in the negative, after reviewing the other decisions.

Homicide.

On the theory that the law accepts human nature as God has made it, it is boldly declared in *State v. Grugin* (Mo.) 43 L. R. A. 774, notwithstanding many judicial declarations, that words, however opprobrious, constitute no provocation in law, that foul and opprobrious words may be sufficient to reduce a homicide to manslaughter if they are of a character to so excite the passions of the mass of men as to enthrall their reason. This doctrine was applied in favor of a man who slew the ravisher of his daughter, who, when asked about it, declared, "I will do as I damn please about it."

Husband and Wife.

The right of a married woman to maintain an action in her own name to recover damages for the alienation of her husband's affections is sustained in *Beach v. Brown* (Wash.) 43 L. R. A. 114, under statutes abolishing disabilities of married women, and it is also held that procuring a divorce will not preclude the action.

Intoxicating Liquors.

The loss of money taken from the owner's pockets while he was intoxicated is held, in *Gage v. Harvey* (Ark.) 43 L. R. A. 143, not to be included in the damages occasioned by the sale of liquor to him, under a civil damage law, since the sale of the liquor was not the proximate cause of the loss, but this was due to the intervening wrongful act of a third person.

Injunction.

The right of a municipality to an injunction against improvements by abutting owners upon streets in a manner materially different from that directed by the board of trustees is sustained in *Drew v. Geneva* (Ind.) 43 L. R. A. 814, where the abutting owner was acting in defiance of a municipal ordinance.

Landlord and Tenant.

Damage done by water from an upper tenement owned and occupied by the lessor, where, because of defective plumbing, it runs down and injures the goods of a lessee on a lower floor, is held, in *York v. Steward* (Mont.) 43 L. R. A. 125, to constitute a breach of an implied covenant for quiet enjoyment, in the absence of excusing facts, and when the lessor had refused, after reasonable notice, to remedy the defects in the plumbing, which caused the damage.

Levy and Seizure.

A sheriff levying on a growing crop of peaches and failing to gather them, or permit the owner to do so, until they have become rotten and worthless, is held, in *State, Wilson, v. Fowler* (Md.) 43 L. R. A. 849, to act in so doing as an officer, and thereby to create a liability on his official bond.

Mandamus.

An action of mandamus to compel the reinstatement of a pupil in a school is held proper in *Jackson v. State, Majors* (Neb.) 42 L. R. A. 792, if the action of the officer or officers by which the pupil was refused admission to or continuance in the school was an arbitrary or capricious exercise of authority.

Municipal Corporations.

The power of a municipality to collect a tax upon property or business so situated that it cannot receive any protection or benefit from it is denied in *Kaysville v. Ellison* (Utah) 43 L. R. A. 81, where a city undertook to compel a merchant to obtain a license for doing business at a little place about two miles out of the city, though within its territory, but which received no police protection from the city.

Negligence.

The humane doctrine that one who voluntarily interposes to save the lives of persons imperiled by the negligence of another is not debarred, on the ground of contributory negligence, from recovering for injuries, is adopted in *Maryland Steel Co. v. Marney* (Md.) 42 L. R. A. 842, and it is held that the proximate cause of the injury is the negligence which created the peril.

The negligence of parents, though not imputed to a minor child who is injured in consequence of the negligence of a third person, is held, in *Ploof v. Burlington Traction Co.* (Vt.) 43 L. R. A. 108, to preclude the parents themselves from recovering for the loss of the child in such case, under a statute which gives a right of action to the personal representative of the child for the benefit of the next of kin.

The serious conflict of authority on the duty of landowners to keep premises safe is considered in *Ritz v. Wheeling* (W. Va.) 43 L. R. A. 148, in which it is held that there is no such duty toward trespassers even if they are children, and that negligence to create a right of action in their favor must be so gross as to amount to a wanton injury.

Payment.

An important limitation on the doctrine that death of the principal revokes an agency is shown in *Deweese v. Muff* (Neb.) 43 L. R. A. 789, in which it is held that payment of a negotiable note indorsed by the payee in blank, if made to the payee's agent who is in possession of the note, will discharge the maker, although the payment was made after the death of the principal, but without notice of his death.

Public Improvements.

Assessments upon abutting owners for new sidewalks and drains, which become necessary only because of a change of the grade of a street, are held, in *Mauldin v. Greenville* (S. C.) 43 L. R. A. 101, to be unconstitutional, where the Constitution requires the whole property of the municipality to be taxed for any public or corporate purpose.

Schools.

The right of women to vote at school elections in Illinois is held, in *Dorsey v. Brigham*

(Ill.) 42 L. R. A. 809, to be limited to women who are citizens. A foreign-born woman whose husband has filed a declaration of intention, but has not yet become a citizen, is denied the right to vote.

Taxes.

The first attempt to subject life insurance policies to taxation was defeated in *State Board of Tax Commissioners v. Holliday* (Ind.) 43 L. R. A. 826, where paid-up or non-forfeitable and partly paid-up life insurance policies were assessed, but the court held that the existing statutes, though providing for the taxation of all property not expressly exempted, did not provide any special regulations for the valuation of this peculiar kind of property.

The exemption of the shares of stock of an incorporated company in the hands of stockholders from any tax or impost whatsoever is held, in *Hancock v. State, Singer Mfg. Co.* (N. J.) 42 L. R. A. 852, to constitute an exemption of the capital stock of the company.

Trademarks.

The increasing recognition of the rights of labor unions to labels or trademarks is illustrated in *Schmalz v. Woolley* (N. J.) 43 L. R. A. 86, holding that a workman or a number of workmen banded together may, on general principles, acquire a right of property in a trademark, and that a statute providing for the adoption of labels, trademarks, etc., by labor unions is constitutional.

Trial.

The right of a state under the Federal Constitution to provide for a jury of less than twelve men is sustained in *State v. Bates* (Utah) 43 L. R. A. 83, in which the provision of the state Constitution for a jury of eight was sustained. This case also held that such a provision was not *ex post facto* as applied to prior offenses, but on this point it has been overruled by the United States Supreme Court in *Thompson v. Utah*, 170 U. S. 843, 42 L. ed. 1061.

Voters and Elections.

Requiring a pledge from those who sign nomination papers to support and vote for the candidate or candidates whose nominator

are therein requested, is held, in *State, Plimmer, v. Poston* (Ohio) 43 L. R. A. 90, to be reasonable and valid, and not to constitute an unreasonable impediment to the exercise of the elective franchise.

Waters.

Percolating water is held, in *Wheelock v. Jacobs* (Vt.) 43 L. R. A. 105, to be as much a part of the earth as the soil and the stones, and not to be subject to the doctrine of prescription. It is also held that a grant of a spring does not, by implication, convey percolating water before it reaches the spring. Water running through a fissure or hole in bed rock below the surface, but not flowing in a well defined channel underground, is deemed percolating water.

The liability of a water company for the dissemination of disease by an impure water supply is denied in *Green v. Ashland Water Co.* (Wis.) 43 L. R. A. 117, unless the water company knows, or from the situation ought to know, that the water is dangerous for domestic use from some cause not discoverable ordinarily by the use of reasonable care, and fails to give the consumers notice of such danger. A consumer who knows, or ought to know, of the dangerous condition of the water when he uses it, is held to have no remedy against the company.

The right of a prior appropriator of water to enter on lands across which his ditch runs, in order to clean and repair the ditch, is sustained in *Carson v. Gentner* (Or.) 43 L. R. A. 130, where the land was patented after his ditch was made.

Recent Articles in Law Journals and Reviews.

"Payment of Negotiable Paper under a Mistake of Fact."—5 *Western Reserve Law Journal*, 1.

"Third Person's Right to Sue on Contract."—2 *Law Notes* (Am.) 225.

"A few Facts on Survivorship."—59 *Albany Law Journal*, 260.

"The Rise of Federal Judicial Supremacy in the United States."—37 *American Law Register*, N. S. 621, 638.

"Forgery by Means of a Rubber Stamp."—37 *American Law Register*, N. S. 745.

"Experts and Their Testimony."—37 *American Law Register*, N. S. 735.

"Government Control of Transportation Charges." Part I.—37 *American Law Register*, N. S. 721.

"Rights and Duties of Belligerents and Neutrals from the American Point of View."—37 *American Law Register*, N. S. 657.

"Recent Decisions of the Various Courts of Last Resort."—7 *American Lawyer*, 105.

"President's Annual Address to the Kansas State Bar Association."—7 *American Lawyer*, 97.

"Medical Expert Testimony."—7 *American Lawyer*, 92.

"The Relation of the Lawyer to Society."—5 *Western Reserve Law Journal*, 42.

"All Laws of a General Nature shall Have a Uniform Operation throughout the State."—5 *Western Reserve Law Journal*, 81.

"Citizenship and the Age of Maturity."—59 *Albany Law Journal*, 238.

"No One shall be Compelled in Any Criminal Case to be a Witness against Himself."—38 *American Law Register*, N. S. 78.

"An Inquiry into the Nature and Law of Corporations." Part II.—38 *American Law Register*, N. S. 65.

"Has Malice Any Place in Civil Wrongs."—19 *Canadian Law Times*, 53.

"The Doctrine of Ultra Vires as Affecting the Rights and Obligations of a Corporation under a Contract to Which it is a Party, when the Contract has been Executed by One Party, but is Executory as to the Other."—48 *Central Law Journal*, 231.

"Colonial Expulsion of Aliens; An Answer."—38 *American Law Review*, 246.

"Confiscation by Assessments."—38 *American Law Review*, 242.

"Can Husband and Wife be Partners?"—38 *American Law Review*, 215.

"Expansion and the Constitution."—33 *American Law Review*, 202.

"Some Phases of Interstate Commerce."—33 *American Law Review*, 188.

"Our Right to Acquire and Hold Foreign Territory."—38 *American Law Review*, 161.

"Capital Punishment."—59 *Albany Law Journal*, 232, 240, 256, 266, 303.

New Books.

"Digest of Bankruptcy Decisions." By E. C. Brandenburg (L. C. P. Co., Rochester, N. Y.) 1 Vol. \$6.50.

"Fitch's Annual Insurance Digest." Vol. 11. (Bowen-Merrill Co., Indianapolis, Ind.) \$8.

"Practice and Procedure of United States Supreme Court." By Heber J. May (John Byrne & Co., Washington, D. C.) 1 Vol. \$6.

"Law of Mortgages in Canada." By Edwin Bell and Herbert L. Dunn. (Canada Law Journal Co., Toronto, Can.) 1 Vol. \$6.50.

"Law of Personal Injuries in Illinois." By David J. Corbin (Callaghan & Co., Chicago, Ill.) 1 Vol. \$5.

"Poor Laws of Pennsylvania." By Calvin G. Beltel (T. & J. W. Johnson & Co., Philadelphia, Pa.) 1 Vol. \$6.

"Revised and Annotated Edition of South Dakota Statutes." By Edwin L. Grantham (E. B. Myers & Co., Chicago, Ill.) 2 Vols. \$15. In 8 Vols., \$16.50.

"Canadian Criminal Cases, Annotated." (Canada Law Journal Co.) Vol. 1. \$6.50.

"Charter of San Francisco." Annotated by Edward F. Treadwell. (Bancroft-Whitney Co., San Francisco, Cal.) 1 Vol. \$4.

"Code Scolaire de la Province de Quebec, Annoté." Par Paul de Caze. (C. Theoret, Montreal, Can.) 1 Vol. \$1.25.

"The Education Act of Quebec, Annotated." By R. Stanley Weir (C. Theoret, Montreal, Can.) 1 Vol. \$1.75.

The Humorous Side.

IT TAKES TWO.—In a recent divorce case in Missouri a husband complains that his wife has continuously "quarreled at" him.

BLAMING THE STENOGRAPHER.—"This statement," says a late opinion, "is a summary of 667 large typewritten pages of what is called 'evidence,' but which, for the most part, is simply 'gabble, gabble, gabble,' thus furnishing a fine illustration of what a curse the art of the stenographer is to the appellate courts."

SAW NOT THE APPLICATION OF THE SAW.—A certain court which presumably knows all about the difference between spades and clubs lately seemed oblivious to the distinction between spades and shovels. An attorney

claimed that an indictment for striking a person with a spade was not supported by proof of striking with a shovel. But the court thought it was all the same, and held the variance immaterial. This seems to dull the edge of the old saw that a spade should be called a spade.

SPOKE WELL OF THE WITNESS.—Referring to a photograph as a deposition of the "unimpeachable sun," a Missouri judge says: "To me it is a very comforting thought and pleasing reflection that amid all the vicissitudes and pressing exigencies of railroad damage suits they have never yet attempted to impeach 'Old Sol.' Perhaps they were deterred by his shining reputation. At any rate, from his serene seat in the heavens, 'from his cairn on high,' he still looks down upon the pigmy populations of earth with the same burning eye wherewithal erstwhile he gazed down upon Ananias that time he went in before the apostles, and 'lied to the Holy Ghost.'"

A FAIR JURY.—In a suit between father and son before a Hoosier J. P. the sextette comprising the jury came in after three hours' deliberation, with the following impartial verdict: "We the jury agree to find judgment for neither plaintiff nor defendant, and find that each pay half the costs." It is said the verdict struck everyone as being unusually fair, that even the parties to the action were satisfied.

WANTED A CHIP OFF THE OLD BLOCK.—The attorney for the plaintiff in an action for killing a dog said: "Gentlemen of the Jury, he was a good dog, a fine-appearing dog, a valuable dog, and it does not lie in the mouth of the defendant to say he was a worthless cur, because it is in evidence before you that on one occasion he offered \$5.00 for one of his pups."

SOME ARE BORN SO.—The trouble with some corporations is described in a late case as follows: "Some are afflicted with what may be called 'congenital' insolvency. They are born insolvent, capitalized into insolvency at the moment of their creation, and eke out a precarious existence in an apparent effort to solve the old paradox of living on the interest of their debts."

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 Derby & Luque's Prov. Remedies, 1886.
 Dickinson's Justice (Mass.) 1818.
 Dillon's Removal of Causes, 3d ed. 1881.
 Donovan's Tact in Court, 1892.
 Eden on Injunctions, 3d ed. 2 vol. 1852.
 Edwards on Bailments, 1855.
 Edwards on Bills & Notes, 2d ed. 1863.
 Edwards on Referees, 1860.
 Elmes' Law of Customs, 1887, clo.
 Fisher on Mortgages, 1857.
 Gazzam's Am. & Eng. Bankruptcy Digest, 2 vols. 1871.
 Gould & Tucker on the Federal Income Tax, 1895, clo.
 Graham & Waterman on New Trials, 2d ed. 3 vols. 1855.
 Hamilton's Banking Law (N. Y.) 1892.
 Hamilton's Corp. Laws (N. Y.) 1892.
 Hamilton's R. R. Laws (N. Y.) 1892.
 Hare & Wallace's Am. Lead. Cases, 2d ed. 2 vols. 1851.
 Haviland on Corporations, 1890.
 Hawley's Law for Land Buyers, 1890.
 Hawley's Law of Arrest, 1889.
 Hill on Trustees, 2d ed. 1858.
 Hilliard on New Trials, 1866.
 Hilliard on Torts, 3d ed. 2 vols. 1866.
 Hilliard on Vendors, 2d ed. 1868.
 Hillyard on Marine Insurance, 1847.
 Hirschl's Legal Hygiene, 1890.
 Hirah's Tab. Digest Divorce Laws, 1888; clo.
 Hoffman's Prov. Remedies, 1862.
 Humphrey's Precedents, 2 vols. 1845.
 Hurlstone on Bonds, Ram on Judgments, Dwarris on Statutes, Matthews on Executors, in 1, 1831.
 Jarman on Wills, 2 vols. 1845.
 King & Leonard's Ark. Citations, 1893.
 Lacey's Dig. Railway Dec., vol. 1, 1875.
 Lewin on Trusts, Schultes on Aquatic Rights, in 1, 1839.
 Lovell on Wills, Stock on Non Compotes Mentis, in 1, 1839.
 Lynch on Real Estate Brokers, 1876.
 McCall's Justice Practice, 6th ed. 1880.
 Maddock's Chancery, 4th ed. 2 vols. 1832.
 Martindale's Am. Law Directory, 1890-91.
 Morrill on Competency of Witnesses, 1886.
 Morris on Replevin, 1848.
 N. Y. General Statutes, 1892.
 Oliver's Conveyancing, 4th ed. 1845.
 Oliver's Precedents, 2d ed. 1840.
 Paley on Agents, Roscoe on Real Actions, vol. 1, in 1, 1840.
 Parsons on Contracts, 2 vols. 1853.
 Parsons on Costs, 1876.
 Phillips on Evidence, 4th ed. 3 vols. 1859.
 Phillips' Manual of Dec. U. S. Sup. Ct. 1882.
 Phillips' U. S. Sup. Ct. Pract. 1872.
 Pinkerton's Administrator's Guide, 1869.
 Pothier on Contracts, 1839.
 Powell on Devises, 2 vols. Beames on Equity Costs, in 1, 1888.
 Preston on Legacies, 1827.
 Pritchard's Admiralty Dig. 1848.
 Rae, The Country Banker, 1886, clo.
 Redfield on Railways, 4th ed. 2 vols. 1869.
 Redfield's Surrogate Pract., 2d ed. 1831.
 Reeve's Domestic Relations, 1816.
 Remsen on Intestate Succession, 1885.
 Revised Statutes of N. Y., 7th ed. 3 vols. 1882.
 Riddle's Supp. Proceedings, 1863.
 Roberts on Frauds, 1807.
 Roper on Legacies, 2 vols. 1829.
 Roscoe on Real Property, Wilcock on Constables, Worthington on Juries, in 2, 1840.
 Ross on Vendors, Robertson on Succession, in 1, 1836.
 Russell on Arbitrators, 1849.
 Russell on Crimes, 6th ed. 2 vols. 1844.
 Selwyn's Nisi Prius, 3d ed. 2 vols. 1857.
 Shearman & Redfield on Negligence, 1869.
 Sedgwick on Damages, 2d ed. 1852.
 Sheehan on Referees & Sheriffs Fees, 1898, clo.
 Smith's Lead. Cases, 8d ed. 2 vols. 1847.
 Smith's Mercantile Law, 3d ed. 1850.
 Smith's N. Y. Ct. App. Pract. 1893.
 Smith on Contracts, Broom on Parties, in 1, 1847.
 Smith's Suit in Equity, Worthington on Wills, Long's Discourses, Coode on Expression, in 1, 1848.
 Snyder's Not. & Com. Man. 3d ed. 1889, clo.
 Starkie on Evidence, 7th Am. ed. 3 vols. 1842.
 Starkie on Slander, 2 vols. 1843.
 Story on Bills, 2d ed. 1846.
 Story on Conflict of Laws, 1834.
 Story on Partnership, 2d ed. 1846.
 Story's Equity Jurisp., 2d ed. 2 vols. 1839.
 Story's Equity Pleadings, 1838.
 Sugden on Vendors, 1820.
 Sugden on Vendors, 2 vols. 1836.
 Taylor on Evidence, 2 vols. in 4 parts, leatherette, 1887.
 Theobald on Principal & Surety, Blanchard on Limitations, Wilkinson on Lim. of Actions, Bradby on Distress, in 1, 1833.
 Thompson on Highways, with Mills' Supp. to 1891, 2 vols.
 Thompson on Highways, 3d ed. 1881.
 Thompson on Prov. Remedies, 1867.
 Thompson on the X Rays, 1896, clo.
 Thompson on Inventions & How to Make Them, 1896.
 Tiffany & Smith's N. Y. Practice, 3 vols. 1864.
 Trial, Curtis, Geo. M. (Impeachment) 1874.
 Dorn, Robt. C. (Impeachment) 1868.
 Prindle, Horace G. (Impeachment) 2 vols. 1874.
 Troubat on Limited Partnership, 1853.
 U. S. Revised Statutes, 1875.
 Van Santvoord's Pleadings, 2d ed. 2 vols. 1855.
 Van Santvoord's Equity Pract. 2d ed. 2 vols. 1860.
 Van Santvoord's Equity Pleading, 2d ed. 2 vols. 1855.
 Vattel's Law of Nations, old ed. (Title page missing)
 Wait's Code Civil Procedure, 1880.
 Wait's Law & Practice, 3d ed. 2 vols. 1867.
 Wandell's Disp. of Decedents Real Estate (N. Y.) 1839.
 Weekly Messenger, vol. 1, 1814.
 Wharton's Conveyancing, 1851.
 Wharton's Am. Crim. Law, 2d ed. 1852.
 Wharton's International Law Dig., 3 vols. 1886.

- White & Tudor's Lead. Cases in Eq., 2 vols. 1849.
 White & Tudor's Lead. Cases in Eq., 3 vols. 1852.
 White & Tudor's Lead. Cases in Eq., vols. 1, 2, 3, 1888 leatherette.
 Whitworth's Equity, Raymond on Exceptions, in 1, 1848.
 Wilcock on Constables, Worthington on Juries, in 1, 1840.
 Wilcock on Municipal Corp. 1847.
 Willard's Equity Jurisprudence, 1855.
 Williams on Executors, 4th ed. 2 vols. 1855.
 Wood's Conveyancing, 6 vols. Dublin, 1792.
 Wooddeson's Lectures on Laws of England, 3 vols. London, 1792.
 Wordsworth on Joint Stock Cos., Joy on Confession, in 1, 1843.
 Am. Reports Dig. (1 to 48) 2 vols.
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 Bingham on Descent, 1970.
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 Bouvier's Institutes, 4 vols. 1851.
 Broom's Commentaries Common Law, 1846.
 Brown on the Statute of Frauds, 3d ed. 1870.
 Bump on Bankruptcy, 6th ed. 1873.
 Buskirk's Practice (Ind.) 1876.
 Calman's Code Time Table, 3d ed. 1891.
 Challis on Real Property, 1887, paper.
 Chitty on Bills, 11th ed. 1848.
 Chitty's Crim. Law, 4th ed. 37 vols. 1841.
 Chitty's General Practice, 2d ed. 4 vols. 1836.
 Chitty's Pleadings, 9th ed. vols. 1 & 2 per vol.
 Coke's Institutes (Day) 3 vols. Phila. 1812.
 Colby's R. R. Laws, 1882.
 Collyer on Partnership, 5th ed. 1861.
 Cook's Corporation Statutes, 1880.
 Cottrell's Latin Maxims, 1897, clo.
 Countryman's Compensation for Legal Services, 1882.
 Cowen's Treatise, 6th ed. 2 vols. 1880.
 Curwen on Abstracts of Title, 1865.
 Desty's Federal Citations, 1878.
 Federal Procedure, 7th ed. 1888.
 Removal of Causes, 1882.
 Dillon on Municipal Corporations, 1872.
 Dillon on Removal of Causes, 4th ed. 1887.
 Donovan's Skill in Trials, 1891.
 Encyclopedia Britannica, 9th ed. vols. 1, 8, 22, per vol.
 Fell on Guaranty & Suretyship, 3d ed. 1872.
 Fitch on Real Estate Agency, 1881.
 Flanders on Fire Insurance, 2d ed. 1874.
 Fox's Digest of Partnership, 1872.
 Fry on Specific Performance of Contracts, 2d ed. 1871.
 Gilbert's Cases, 2d ed. Dublin, 1792.
 Greenleaf on Evidence, 3 vols. 2d ed. 1844.
 Greenleaf on Evidence, vol. 3, 4th ed. 1857.
 Hare & Wallace's Am. Lead. Cases, 4th ed. 2 vols. 1857.
 Hecker's Cases on Warranty, 1874.
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 Kent's Commentaries, 5th ed. vols. 1 & 2, 1840, per vol.
 Kent's Commentaries, 6th ed. vols. 2 & 4, 1848, per vol.
 Kerr on Injunctions, 1871.
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 Lewin on Trusts, 3 vols. 1887, paper.
 Lewis on Perpetuity, 1846.
 Lilly's Modern Entries, 3d ed. Savoy, 1758, folio, broken.
 Lives of Eminent Lawyers, Dublin, 1790.
 McCrary on Elections, 1875.
 McClellan's Surrogate Practice, 3d ed. 1889.
 Montesquieu's Spirit of Laws, 2d ed. 2 vols. 1752.

- Overton's Code of Practice (Ia. & Wis.) 1875.
 Parsons on Notes & Bills, 2 vols. 1862.
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 Redfield & Bigelow's Lead. Cases Bills & Notes, 1871.
 Roscoe's Crim. Evidence.
 Saxton's Tax Laws of N. Y. 1880.
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 Smith on Coroners & Constables, 1888.
 Smith's Lead. Cases, 5th ed. 2 vols. 1855.
 same 6th ed. 3 vols. 1866.
 Smith on Negligence, 1887, leatherette.
 Spalding's Treatise (Kan.) 1876.
 Spear on Jurisdiction Federal Courts, 1888.
 Story on Bailments, 4th ed. 1846.
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 Sugden on Vendors, 6th ed. 3 vols. in 2, 1842.
 Taylor on Landlord & Tenant, 2d ed. 1852.
 Townsend's Commercial Law, 1871.
 Trial. Smith v. Ogden (Misdemeanors) 1807.
 U. S. Land Laws, Local & Temporary, vol. 1, 1880.
 Wandell's "You Should Not," 1895, clo.
 Washburn's Lectures on Study of Law, 1871, clo.
 Wharton on Homicide, 1854.
 Wharton on Law of Negligence, 1874.
- White & Tudor's Lead. Cases in Equity, 3d ed. 3 vols. 1859.
 Wilcock on Corporations, Warren's Law Studies, in 1, 1836.
 Willey's Procedure in Law & Equity, 1894.
 Williams on Personal Property, 3d ed. 1866.
 Wooddeson's Lectures on Laws of England, 3 vols., Wordsworth on Joint Stock Cos. in 2, 1842.
 Wright's Crim. Conspiracy, 1887.
 Cockcroft's Unabridged Table of Cases, 1878, 1 vol.
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 Anthon's Analysis of Blackstone, 2d ed. 1832.
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 Austin's Jurisprudence, 3 vols. Lond. 1861, clo.
 Bank's Code Civil Procedure (As It Is) 1883.
 Beames' Ne Exeat Regno, 1821.
 Benet's Military Law & Courts Martial, 4th ed. 1862.
 Benham's N. Y. R. R. Laws, 1894.
 Benjamin's Principles of Contracts, 1891, clo.
 Benjamin's Chalmers' Digest of Bills & Notes, 1881.
 Benjamin on Sales, 3d ed. (Bennett) 1881.
 Bennett's Fire Insurance Cases, vols. 1, 2, 3.
 Bigelow on Estoppel, 1872.
 Bigelow's Life & Accident Insurance Reports, vols. 1 to 3.
 Binn's Justice (Pa.) 7th ed. 1862.
 Birdseye's Revised Statutes, 4 vols., 1899.
 Bisbee & Simond's Law of Produce Exchange, 1884.
- Bishop on Marriage & Div., 4th ed. 3 vols. 1864.
 Blackwell on Tax Titles, 4th ed. 1875.
 Blatchford's Rules of the U. S. Courts, 1884.
 Brightly's Equity Jurisprudence (Pa.) 1855.
 Broom's Legal Maxims 3d ed. 1853.
 Brown's Digest of Divorce & Alimony, 1872.
 Bump on Bankruptcy, 7th ed. 1874.
 Burke, Edmund, Works of, 12 vols. clo.
 Burrill on Assignments, 3d ed. 1877.
 Burrill on Circumstantial Evidence, 2d ed. 1856.
 Challis on Real Property, 1887.
 Chitty's Criminal Law, 5th ed. 3 vols. 1847.
 Pleadings, 10th ed, vols. 1 & 2, 1847, per vol.
 Clark's Tex. Criminal Law, 1881.
 Coke's Institutes (Thomas) 2d Am. ed. 3 vols. 1836.
 Coler on Municipal Bonds, 2 vols. 1872.
 Cook's General Index Laws of N. Y. (1876 to 1885.)
 Cooley on Taxation, 1876.
 Copp's Public Land Laws, 2 vols. 1883.
 Crabb's English Law, 1831.
 Crocker on Sheriffs, 2d ed. 1870.
 Curtis Jurisdiction in U. S. Courts, 1880.
 Curtis on Patents, 3d ed. 1867.
 Cushing's Legislative Assemblies, 2d ed. 1856.
 De Colyar on Guaranty & Surety, 1887.
 DeLolme on the English Constitution, 1800.

- Derby's Assignment Law, 3d ed. 1692.
Desty's Removal of Causes, 2d ed. 1887.
Dicey on Parties, 1879.
Dickinson's Probate Practice (N. J.) 1884.
Dillon on Municipal Corporations, 2d ed. 2 vols. 1878.
Diosay's Statute Laws, 3 vols. 1881.—
Dixon on Subrogation, 1862.
Drake on Attachment, 3d ed. 1866.
Eaton & Greene's Negotiable Inst. Law, 1897.
Edwards on Bailments, 2d ed. 1878.
Estee's Pleading & Forms, 3d ed. vols. 2 & 3, per. vol.
Field on Corporations, 1877.
Field's Famous Legal Arguments, 1897.
Fiero on Special Actions, 1888.
Foster's Federal Jud. Acts, 1875 & 87, clo.
Freeman on Judgments, 2d ed. 1874.
Gary's Probate Law, 1879.
Glaucque's Notaries & Convey. Manual, 1888.
Green's Brice on Ultra Vires, 1875.
Greene's Law of Taxable Transfer, 1897.
Greene's Practice Time Table, 1897.
Greenleaf on Evidence, vol. 2, 10th ed. 1867.
Evidence, 5th ed. 3 vols. 1850.
Overruled Cases, 4th ed. 1856.
Hale's Pleas of the Crown, vol. 2, 1847.
Hall's Patent Estate, 1888.
Harris' Criminal Law, 1880.
Heard's Curiosities of the Law Reporters, 1891.
Herman on Chattel Mortgages, 1877.
Hick's Manual of Chancery Pract. (Ten.) 1870.
High on Extraordinary Legal Remedies, 1874.
High on Injunctions, 1878.
Hill on Fixtures, 1871.
Hill on Trustees, 4th ed. 1867.
Hilliard on New Trials, 2d ed. 1872.
Mortgages, 4th ed. 2 vols. 1872.
Real Property, 4th ed. 2 vols. 1869.
Torts, 4th ed. 2 vols. 1874.
Hoffman's Chancery Practice, 3 vols. 1835.
Husbands' Law of Married Women & Trusts (Pa.) 1878.
Hutchinson on Carriers, 1879.
Indermaur's Principles of Common Law, 1878.
International Law, Digest of, Opinions & Lead. Cases on, 1877.
Jarman on Wills, 3d ed. 2 vols. 1855.
Jones on Mortgages, 2 vols. 1878.
Railroad Securities, 1879.
Rules of Federal Practice, 1884.
Kent's Commentaries, 5th ed. 4 vols. 1840.
King & Leonard's Neb. Citations, 1894.
Lewin on Trusts, 3 vols. 1887.
Lewin on Trusts (Flint's Notes) 2 vols. 1888, paper.
Lindley on Partnership, 2 vols. 1881.
Littleton & Blatchley's Dig. Fire Ins. Decisions, 3d ed. 1873.
Mason's Practice New Eng. States, 1880.
Mills on Eminent Domain, 1879.
Modern Probate of Wills, 1846.
Morey's Outlines of Roman Law, 9th. ed. 1896.
Myer's Federal Decisions.
Vol. 1 (Abandonment to Appeals) 1884.
Vol. 2 (Appeals to Award) 1884.
Vol. 4 (Bonds to By Laws) 1885.
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Vol. 10 (Corp. to Court Records) 1885.
Paine on Building & Loan Ass'ns. 1889.
Pearson's Practice in Sup. Ct. Pa. 1885.
Peloubet's Law Student's Dictionary, 1879, clo.
Peloubet's Legal Maxims, 1880, clo.
Phillips on Insurance, 5th ed. 2 vols. 1857.
Pollock's Digest of Partnership, 1878.
Porter on Insurance, 1889.
Pothier on Maritime Contracts, 1821.
Potter on Corporations, 2 vols. 1879.
Redfield's American Ry. Cases, 2d ed. 2 vols. 1872.
Carriers, 1869.
Railway Cases, 1870.
Revised Statutes of N. Y. 8th ed. 5 vols. 1889.
Robinson's Practice, vols. 1 to 3, 1854, per. vol.
Rogers on Drinks, Drinkers & Drinking, 1881, clo.
Sand's Suit in Equity, 1854.
Sedgwick on Damages, 5th ed. 1869.
Shearman & Redfield on Negligence, 2d ed. 1880.
Sheppard's Touchstone, 2 vols. London, 1820.
Simond's on Patents for Designs, 1874.
Smith on Chattel Mortgages, 1889.
Contracts, 5th ed. 1868.
Lead. Cases, 7th ed. 3 vols. 1872.
Master & Servant, 1888.
Mercantile Law, 5th ed. 1885.
Negligence, 1887.
Snyder's Mechanic's Lien Law, 1890.
Snyder's Not. & Com. Manual, 4th ed. 1892.
Snyder on Religious Corp., 2d ed. 1887, clo.
Spear on Extradition, 1878.
Starkle on Slander, 2 vols. in 1, 1848.
Stephen's Digest of Evidence (May) 1877.
Digest of Evidence, 2d ed. 1879.
Stephens' Digest of Evidence (Reynolds) 1879.
Pleading, 1844.
Story on Agency, 6th ed. 1862.
Bailments, 5th ed. 1851.
Equity Pleading, 4th ed. 1847.
Conflict of Laws, 3d ed. 1846.
Equity Jurisp., 6th ed. 2 vols. 1852.
Partnership, 5th ed. 1859.
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Sugden on Powers, 2 vols. in 1, 1837.
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Taylor on Evidence, 2 vols. 1887.
Landlord & Tenant, 5th ed. 1869.
Thatcher's U. S. Dist. Ct. Practice, 1883.
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Wells on Jurisdiction of Courts, 1880.
Wentworth's Interstate Com. Law, 1891, clo.
Whart. Am. Crim. Law, 5th ed. 2 vols. 1861.
Wharton on Evidence, 2 vols. 1877.
Wheaton's Elements International Law, 3d ed. 1846.
White on Corporations, 1894.
Wilgus Cases on Evidence, 1896.
Williams on Personal Property, 4th ed. 1872.

Wood on Fire Insurance, 1878.
 Landlord & Tenant, 1881.
 Master & Servant, 1877.
 Railway Law, 3 vols. 1885.
 Wright on Criminal Conspiracy, 1887.
 Am. Reports Dig. (1 to 60) 3 vols.
 National Bankruptcy Register Dig. (1 to 10)
 Bentley's Dig. Op. Attys. General, 1881.
 Ind. Burn's Index, vol. 2 (78 to 100)
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U. S. Digest, F. S. vols. 2, 4, 5, 6, 7, 10, per
 vol.
 Ala. Revised Code, 1867.
 La. Morgan's Civil Code, 1853.
 Mich. Compiled Laws, 1872, 2 vols.
 Vt. General Statutes, 2d ed. 1870.
 N. Y. Index to Laws (1876 to 1885)
 Am. Law Register, O. S. vols. 1 to 5, 9, per
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 1888.
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 Angell on Limitations, 5th ed. 1869.
 Angell & Ames on Corporations, 9th ed.
 1871.
 Bacon on Benefit Societies, 1888.
 Baker on Sales, 1887.
 Barbour's Chancery Pract. 2d ed. 3 vols. 1874.
 Bates on Limited Partnership, 1886.
 Baylles' Questions & Answers, 1878.
 Beck's Medical Jurisp. 10th ed. 2 vols. 1850.
 Benjamin on Sales (Bennett) 4th ed. 1883.
 Benjamin on Sales (Corbin) 2 vols. 1883.
 Best on Evidence (Morgan) 2 vols. 1881.
 Bigelow's Overruled Cases, 1873.
 Bisot's By-Laws of Corporations, 1892, clo.
 Bishop on Contracts, 1878.
 Criminal Law, 3d ed. 2 vols. 1865.
 Criminal Procedure, 2d ed. 2 vols. 1872.
 Bonyng & Ward, 1,500 Questions Answered,
 1887.
 Bradner's Rules of Pleadings, 1892.
 Brandt on Suretyship, 1878.
 Broom's Philosophy of Law, clo.
 Browne on Trade Marks, 1873.
 Browne on Usages & Customs (Clarke) 1881.
 Bump on Bankruptcy, 9th ed. 1877.
 Burdick's Cases on Torts, 1891.
 Burrill's Practice, 2d ed. 2 vols. 1846.
 Byles on Bills, 6th ed. 1874.
 Chitty on Pleading, 8th ed. 3 vols. 1840; 11th
 ed. vols. 2, 3, 1851.
 Collyer on Partnership, 6th ed. 2 vols. 1878.
 Cook's Crim. & Penal Code, 1895.
 Cook on Stock & Stockholders, 1887.
 Cooper on Referees, 1888.
 Cowen's Treatise, 7th ed. 1883.
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 Dillon's Removal of Causes, 5th ed. 1889.
 Drake on Attachment, 5th ed. 1878.
 Estee's Pleadings & Forms, 2d ed. 3 vols. 1878.
 Erskine's Speeches, 4 vols. clo.
 Donovan's Speeches & Speech Making, 1895.
 Fearne on Remainders, vol. 1. 1845.
 Field on Infants, 1888.
 Field's Lawyers' Briefs, 6 vols. 1884.

Field on Ultra Vires, 1881.
 Fortescue's de Laudibus Legum Angliæ, 1874.
 Foster's Federal Practice, 1890.
 Freeman on Judgments, 3d ed. 1881.
 Freeman on Void Judicial Sales, 2d ed. 1886.
 Giaque's Not. Manual, 2d ed. 1897, clo.
 Gould on Pleading, 4th ed. 1861.
 Gould on Waters, 1883.
 Greenleaf on Evidence, 12th ed. 3 vols. 1866.
 18th ed. vols. 2 & 3, 1876, per vol.
 Hanover on Horses, 1872.
 Hawes on Parties to Actions, 1884.
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 Heard's Criminal Law (Mass.) 1879.
 Hillard on Taxation, 1875.
 International Encyclopedia, 15 vols. 1889.
 Jarman on Wills (R. & T.) 3 vols. 1890.
 Jones on Business Corp. 3d ed. 1895.
 Chattel Mortgages, 1881.
 Liens, vol. 1, 1888.
 Mortgages, 2d ed. 2 vols. 1879.
 Kelly's Contracts of Married Women, 1882.
 Kent's Commentaries, 11th ed. vol. 4, 1856.
 Kerr on Receivers, 1872.
 Langdell's Cases on Contracts, part 1, 1879.
 Lesser's History of the Jury System, 1894, clo.
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 Insurance, 1873.
 Montesquieu's Spirit of Laws, 2 vols. 1886, clo.
 Morawetz on Private Corporations, 1882.
 Moreau & Carleton's Partidas (La.) 2 vols.
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 Morse on Banks and Banking, 2d ed. 1879.
 Morse on Citizenship, 1881.
 Myers' Federal Decisions, vol. 3 (Bailments,
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 Parsons on Contracts, 5th ed. 3 vols. 1864.
 Partnership, 3d ed. 1878.
 Pattee's Illus. Cases in Personality, 1893.
 Perry on Trusts, 1872.
 Phillips on Evidence, 5th ed. 3 vols. 1867.
 Phillips on Mechanics' Liens, 1874.

- Pomeroy's Constitutional Law, 3d ed. 1868.
 Ram on Facts, 3d ed. 1873.
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 Redfield's Surrogate Practice, 3d ed. 1884.
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 Rorer on Interstate Law, 1879.
 Roscoe's Crim. Evidence, 7th ed. 1874.
 Schouler on Domestic Relations, 1870.
 Schouler on Personal Property, 2 vols. 1873.
 Scott on the Intestate Law (Pa.) 1871.
 Sedgwick on Damages, 6th ed. 1874.
 Sharswood & Budd's Lead. Cases Real Property, 4 vols. 1882.
 Same, vols. 2 & 4 per vol.
 Shearman & Redfield on Negligence, 3d ed. 1880.
 Shepard's Adhesive Annotations to Wis. Reports.
 Shirley's Lead. Cases Common Law, 1888.
 Sloane on Landlord & Tenant, 1884.
 Smith's Common Law, 1871.
 Equity Pleading, 8th ed. 1870.
 Leading Cases, 8th ed. 4 vols. 1884.
 Negligence (Whittaker) 1886.
 Probate Law, 2d ed. 1863.
 Smith on Negligence, Challis on Real Property, in 1, 1887.
 Snell's Principles of Equity, 1885.
 Snyder's Not. & Com. Manual 5th ed. 1895.
 Soule's Abbreviated Citations, 1897.
 Spence on Equitable Jurisdiction, 2 vols. 1846.
 Stephens' Digest Crim. Law, 1877.
 Stephens' Malicious Prosecution, Shirley's Leading Cases Crim. Law in 1, 1889.
 Story on Agency, 8th ed. 1874.
 Bills, 4th ed. 1860.
 Confl. of Laws, 5th ed. 1857.
 Equity Jurisp. 10th ed. 2 vols. 1870.
 Partnership, 6th ed. 1863.
 Promissory Notes, 6th ed. 1868.
 Sutherland on Damages, vol. 2, 1882.
 Swan's Pract. and Precedents (Ohio) 2 vols. 1845.
 Swan's Treatise (Ohio) 18th ed. 1890.
 Thayer on Development of Trial by Jury, 1896, clo.
 Thompson's Charging the Jury, 1880, clo.
 Thompson & Merriam on Juries, 1882.
 Throop on Validity of Verbal Agreements, 1870.
 Tidd's Practice. London, 1837.
 Trial, Burr, Aaron (Treason) 2 vols. 1875.
 Troubat & Haly's Practice, 4th ed. 2 vols. 1867.
 Tucker's Commentaries, 2 vols. 1831.
 Tudor's Lead. Cases Mercantile & Maritime Law, 2 vols. 1873.
 Upton's Maritime Warfare & Prize, 2d ed. 1868.
 U. S. Land Laws, Local & Temporary, 2 vols.; General & Permanent, 1 vol.; 3 vols. 1880.
 Von Holst's Constitutional Law of the U. S. 1887.
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 Washburn's Manual Crim. Law 2d ed. 1889.
 Webb's Crim. Law (Tex.) 1880.
 Wells on Questions of Law and Fact, 1876.
 Wendell's Blackstone, 4 vols. 1847.
 Wendell's Blackstone, vol. 4, 1847.
 Wentworth's Interstate Commerce Law, 1891.
 Wharton on Evidence, 2d ed. 2 vols. 1879.
 Wharton's Law Dictionary. 2d ed. 1860.
 White & Tudor's Lead. Cases in Equity, 4 vols. 1883.
 Willard's Equity Jurisp. 2d ed. 1875.
 Williams on Executors, 6th ed. 3 vols. 1877.
 Wood on Limitation of Actions, 1882.
 Young, Labor in Europe & America, 1876.
 Zabriskie's Land Laws, 1870.
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 Reporter Blue Label Book, 1891.
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 Minn. Gen. Statutes, 2 vols. 1888.
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 Equity, 5th ed. 1863.
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 American Eloquence, 2 vols. 1857, clo.
 American Negligence Cases, vol. 1.
 American & English Dec. in Equity, vols. 1 to 3, 1895 to 1897.
 Angell on Watercourses, 6th ed., 1869.
 Archbold's Crim. Pract. & Pleading, 8th ed. 1877, vol. 1.
 Archbold's Nisi Prius, 3d ed. 2 vols. 1853.
 Arnold on Marine Insurance, 2 vols. London, 1877.
 Ballard's Annual Law of Real Property, vols. 1 & 2, 1892, each.
 Barbour on Rights of Persons, 2 vols. 1890.
 Barton's Suit in Equity, 1884.
 Bateman on Auctions (Sheldon) 1883.
 Beach on Receivers, 1887.
 Becker & Howe's N. Y. Civil & Crim. Justice, 1895.
 Benedict's Admiralty, 2d ed. 1870.

- Benjamin on Sales (Kerr) 2 vols. 1888.
 Bennett & Heard's Lead. Cases Crim. Law, 2d ed. 2 vols. 1869.
 Benton's Thirty Years in U. S. Senate, 2 vols.
 Bigelow's Cases on Bills & Notes, 1894, clo.
 Bigelow on Estoppel, 3d ed. 1882.
 Bigelow' Lead. Cases on Torts, 1875.
 Birdseye's Chron. Tab. of Statutes, 2 vols. 1777 to 1887.
 Bishop's Crim. Law, 6th ed. 2 vols. 1877.
 Marriage & Divorce, 6th ed. 2 vols. 1881.
 Blackstone, Brewster's Questions & Answers, 1886.
 Boone on Corporations, 1881.
 Mortgages, 1884.
 Bouvier's Law Dictionary, 9th ed. 2 vols. 1852.
 Boyer's Crim. Digest of Pa. 1891.
 Broom & Hadley's Commentaries, 2 vols. 1875.
 Browne's Criminal Law, 1892.
 Bryant's Code Pldg. '91, clo.
 Bump's Federal Procedure, 1881.
 Bump's Law of Patents & Trademarks, 1877.
 Burhan on Municipal Bonds, 1889, clo.
 Burrill on Assignments, 4th ed. 1882.
 Caruthers' History of a Law Suit, 1860.
 Chitty's Blackstone, 2 vols. 1832.
 Contracts, 11th ed. 2 vols. 1874.
 Pleading, 12th ed. vols. 2 & 3, 1855.
 Churchill on Sheriffs, 2d ed. 1882.
 Cochran's Students Law Lexicon, 2d ed. 1892.
 Columbus, Old and New Lights on, by Clarke, 1893.
 Cook on Stock & Stockholders, 2d ed. 1889.
 Cooley's Constitutional Limitations, 4th ed. 1878.
 Cooper's Insurance Laws, 1893.
 Cumming & Gilbert on Religious Corp. (N. Y.) 1895.
 Curran's Speeches, 1877.
 Curtis' Equity Precedents, 4th ed. 1869.
 De Colyar on Guaranty, etc., 1875.
 Deering on Negligence, 1886.
 Digby's History on Real Property, 4th ed. 1892, clo.
 Drake on Attatchment, 6th ed. 1884.
 Drake's Village Charter, 1897, clo.
 Dunlap's Abridgment, 2 ed. 1892.
 Dwaris on Statutes (Potter) 1871.
 Eldridge, U. S. Internal Revenue Tax, 1895.
 Edwards on the Stamp Act, 2d ed. 1863.
 Endlich on Building Associations, 1882.
 Estee's Pleadings & Forms, 3d ed. 3 vols. 1886.
 Ewell on Fixtures, 1876.
 Field's Lawyers' Briefs, vol. 6.
 Foote & Everett's Law of Incorporated Cos. 8 vols. 1892.
 Freeman on Cotenancy, 1874.
 Gardner's Review in Law & Equity, 1895.
 Gear on Landlord & Tenant, 1888.
 Giaunque's Not. & Convey. Manual, 2d ed. 1897.
 Gilbert, Railroads and the Courts, 1885.
 Gluck & Becker on Receivers, 1891.
 Gray's Select Cases on Personal Prop. 1893, paper.
 Greeley's American Conflict, 2 vols. 1864.
 Green's Crim. Law Reports, 2 vols. 1874.
 Griswold's Fire Underwriters' Text Book, 1872.
 Harris on Sunday Laws, 1892.
 Hints in Advocacy. 9th ed. 1892.
 Hawes on Assignments, 1876.
 Hawley & McGregor's Crim. Law, 1897, clo.
 Headley on Assignments (N. Y.) 1896.
 Heard's Precedents of Equity Pleading, 1883.
 Hepburn's Historical Development of Code Pleading, 1897, clo.
 Heydecker on Mechanic's Liens, 1897.
 Hicks' Chancery Pract. (Tenn.) 2d ed. 1883.
 High on Extra. Legal Remedies, 1884.
 Holt on Concurrent Jurisdiction, 1888.
 Johnson's Mechanic's Lien Law of Pa. 2d ed. 1886.
 Jones on Chattel Mortgages, 2d ed. 1883.
 Mortgages, 3d ed. 2 vols. 1882.
 Kent's Commentaries, 13th ed. 4 vols. 1884.
 13th ed. vol. 1, 1884.
 King & Leonard's Texas Citations, 2d ed. 1894.
 Kinney's Ia. Practice & Pleading, 1888.
 Lacey's Digest of Railway Decisions, 2 vols. 1875-84.
 Langdell's Select Cases on Contracts, 1871.
 Lawson's Contracts of Carriers. 1880.
 Lester's Land Laws, 2 vols. 1870.
 Lowell's Transfer of Stock, 1884.
 Maxwell's Justice Practice, 5th ed. 1888.
 May on Insurance, 2d ed. 1881.
 Metcalf on Contracts, 2d ed. 1887.
 Morgan's Legal Maxims, 3d ed. 1878, clo.
 Morrison's Mining Digest, 1878.
 Munger on Application of Payment, 1879.
 Murfree's Justice Practice, 1886.
 Myers' Federal Decisions on Contracts, 1885.
 Odgers on Slander & Libel, 1887.
 Oliver's Precedents, 4th ed. 1874.
 Ordonaux Judicial Aspects of Insanity, 1878.
 Parsons on Bills & Notes, 2d ed. 2 vols. 1874.
 Citizenship, 1875.
 Contracts, 7th ed. 8 vols. 1893.
 Paschal's Annotated Constitution, 3d ed. 1876.
 Phalen's Crim. Cases, 1884.
 Phillips Mechanic's Lien Law, 2d ed. 1882.
 Pierce on Mortgages of Merchandise, 1883.
 Pingrey on Chattel Mortgages, 1891.
 Platt on Leases, 2 vols. 1847.
 Pollock on Torts, 1887.
 Pomeroy on Contracts, 1879.
 Poor on Referees, 1888.
 Pothier on Obligations, 3d ed. 2 vols. 1853.
 Rapalje, on Larceny, 1892.
 Rapalje & Mack's Digest of Railway Law, vol. 1.
 Reynolds' Theory of Evidence, 3d ed. 1897.
 Riddle's Supplementary Proceedings, 2d ed. 1882.
 Ringgold on Sunday Laws, 1891.
 Rockwell's Spanish & Mexican Law, 1851.
 Robinson's English Institutions, vol. 1, 1882.
 Practice, vols. 1 & 2, 1832, per. vol.
 Rorer on Judicial Sales, 2d ed. 1878.
 Saylor's American Form Book, 2d ed. 1878.
 Schouler on Bailments, 1880.
 Sharswood's Blackstone, vol. 2, 1859.
 Shepard's Adhesive Annotations Am. Dec.
 Shirley's Dartmouth College Causes, 1879, clo.
 Shirley's Lead. Cases Crim. Law, Stephens
 on Malicious Pros. in 1, 1839.
 Shortt on Mandamus, 1888.
 Smith on Chattel Mortgages, 2d ed. 1895.
 Contracts. 2d ed. 1887.
 Lead. Cases, 9th ed. 3 vols. 1888.
 Mercantile Law (Pomeroy) 1887.
 Sheriffs & Coroners, etc., 1893.
 Smyth on Homesteads & Exemptions, 1875.
 Snell's Principles of Equity, 1885.

- Snyder's Mechanic's Lien Law, 8d ed. 1896.
 Spear on Extradition, 2d ed. 1884.
 Starkie on Evidence, 9th ed. 1869.
 Slander & Libel (Folkard) 1877.
 Stephens' Digest of Evidence (Chase) 1885.
 Pleading (Heard) 1867.
 (Tyler) 1871.
 Stickney on State Control of Trade & Commerce, 1897, clo.
 Story on Conflict of Laws, 8d ed. 1846.
 Equity Pleading, 9th ed. 1879.
 Sales, 4th ed. 1871.
 Student's Kent (Thompson) 1896.
 Sutherland on Damages, 3 vols. 1882.
 Swan's Treatise (Ohio) 1892.
 Taylor's Crim. Law & Pract. (Kan.) 2 vols. 1891.
 Thomas on Chattel Mortgages, 1889.
 Thompson on Building Associations, 1892.
 Law of the Farm, 1876.
 National Bank Cases, 1878.
 Tidd's Practice, 3d ed. 2 vols. 1840.
 Trial, Armstrong (Int. Law) 1857.
 Tyler on Ejectment, 1870.
 Von Holst's Const. History of the U. S. 8 vols. clo. & shp.
 Walt's Fraud. Convey. 2d ed. 1889.
 Walker on Patents, 2d ed. 1889.
 Walsh's Student's Quiz Book on Blackstone & Contracts, 1892.
 Waples on Attachment, 1885.
 Warvelle on Abstracts, 1883.
 Washburn on Real Property, 4th ed. 3 vols. 1876.
 Webb on Passenger and Freight Elevators, 1896.
 Webster, Daniel, Great Speeches, clo.
 Reminis. of, by Harvey, clo.
 Wells on Questions of Law & Fact, 2d ed. 1878.
 Wharton's Crim. Pleading & Pract. 8th ed. 1880.
 Wharton & Stille's Medical Jurisp. 3d ed. 3 vols. 1872.
 4th ed. vol. 1, 1882.
 Wheeler on Carriers, 1890.
 White's Land Laws, 2 vols. 1839.
 Willard on Real Estate, 2d ed. 1885.
 Wild's Journal Entries, 3d ed. 1891.
 Willey's Procedure in Courts of Law & Equity, 2d ed. 1896.
 Wood on Mandamus, 2d ed. 1891.
 Woolen's Topical Annotations (Ind.) 1893.
 Zell's Encyclopaedia & Dictionary, 4 large vols. mor.
 Am. State Reports Dig. (Mack) (1 to 24) 1 vol.
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 Mich. Howell's Annotated Statutes, 3 vols. 1890.
 Same, 2 vols. 1882.
 Mich. Analyzed Citations (1 to 77) 1 vol.
 Minn. Statutes (Kelly) 2 vols. 1891.
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